

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 152

THOMAS W. NELSON AND ARTHUR GLOBE,  
PETITIONERS

vs.

COUNTY OF LOS ANGELES, ET AL.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF  
THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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1 Before the Civil Service Commission of Los Angeles County

IN THE MATTER OF THOMAS W. NELSON

APPEAL FROM DISCHARGE

*Reporter's transcript of hearing*

June 11, 1956

*Members of the Commission:* Harry Albert, Chairman; Hayden Jones, Member; Winston W. Crouch, Member.

*Appearances:* Harold W. Kennedy, County Counsel, by his Deputy, Baldo Kristovich, Esq., for the Civil Service Commission; William T. Pillsbury, Esq., for Mr. Thomas W. Nelson.

2 *Proceedings*

Before the Civil Service Commission of the County of Los Angeles, 510 North Main Street, Los Angeles, California, 9:30 A.M., Monday, June 11, 1956, In the Matter of Appeal from Discharge by Thomas W. Nelson; Harry Albert, Chairman, presiding.

\* \* \* \* \*

Chairman HARRY ALBERT. The meeting will come to order. May the record show that the Commission has met this morning to hear the appeal of Thomas W. Nelson from discharge from the position of Medical Social Worker, Bureau of Public Assistance, Department of Charities.

Is Mr. Nelson present?

Mr. WILLIAM T. PILLSBURY. Yes; Mr. Nelson is present.

Chairman ALBERT. May the record show that Mr. Nelson is present and represented by William T. Pillsbury, Attorney at Law; that the Department is represented by Mr. Alvin Karp and that legal counsel for the Department is Baldo Kristovich.

May the record further show that all members of the Commission are present; Commissioner Hayden Jones, Commissioner Winston W. Crouch, and Commissioner Harry Albert, and that the Commission is being advised by Andrew O. Porter, Deputy County Counsel, who acts only as legal ad-

viser to us and in no way takes part in the deliberations  
3 at the conclusion of the hearing.

The record in this matter is being taken by a reporter from the Stenotype Company, 2601 West Olympic Boulevard, and a transcription of the hearing can be obtained by paying the usual fees of that company. The Commission does not provide a copy of the transcript.

Would you please state the phone number of the company and the name of the reporter?

The REPORTER. DUnkirk 8-1448. Betty Revell.

Chairman ALBERT. Are you ready to proceed?

Mr. PILLSBURY. Ready.

Mr. KRISTOVICH. Ready, Your Honor.

### *Stipulations*

It will be stipulated between the County of Los Angeles, Department of Charities, the employer, and Thomas W. Nelson, the employee, who asked for this hearing, that Thomas W. Nelson was first employed by the County of Los Angeles, Department of Charities, on March 2, 1949, as a Social Worker, Temporary, (Emergency) and that on May 18, 1949, he resigned from said position for personal reasons.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

It is further stipulated that Thomas W. Nelson was again employed by the County of Los Angeles, Department of Charities, on April 1, 1952, as a Medical Social Worker,  
4 Temporary (Emergency) and continued in said position until June 17, 1952, when he was appointed a Medical Social Worker, Temporary, in which position he continued until June 16, 1953, when he was appointed to the position of Medical Social Worker, Permanent.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

It is further stipulated that Thomas W. Nelson signed the County Loyalty Oath on April 1, 1952, and the State Loyalty Oath on April 1, 1952.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

It is further stipulated that on September 7, 1954, Mr. Nelson answered "No" to question 15 "Are you now knowingly a member of the Communist Party?" on his application for the position of Medical Social Work Director.

Will you so stipulate?

Mr. PILLSBURY. What was that date?

Mr. KRISTOVICH. September 7, 1954.

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

5 It is further stipulated that on April 4, 1956, when Thomas W. Nelson was so employed as a Medical Social Worker, Permanent, by the County of Los Angeles, Department of Charities, he was personally served with a copy of the order adopted by the Board of Supervisors of the County of Los Angeles on February 19, 1952, concerning the possible appearance of certain employees before the House Committee on Un-American Activities, which order declared and set forth the duties of such employee upon said appearance.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

It is further stipulated that while so employed as a Medical Social Worker, Permanent, said Thomas W. Nelson was subpoenaed to appear before the United States House of Representatives Committee on Un-American Activities, and that on April 20, 1956, pursuant to said subpoena Thomas W. Nelson was put under oath and was asked a series of questions by committee members and the counsel of said committee.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation.

May we please mark at this time—

6 Chairman ALBERT. Is this also by stipulation?



Mr. KRISTOVICH. Yes. May we please mark at this time as Department Exhibit 1 for identification a transcript of the hearing before the Committee on Un-American Activities of the House of Representatives, dated April 20, 1956; place, Los Angeles, California, covering the testimony of Thomas W. Nelson and prepared by the Alderson Reporting Company. I just want to mark it for identification now, Mr. Chairman.

It will now be further stipulated—

Chairman ALBERT. Just for identification?

Mr. KRISTOVICH. Yes.

Mr. PILLSBURY. Excuse me for interrupting. I will so stipulate.

Mr. KRISTOVICH. It is further stipulated that this transcript marked 1 for identification, consisting of pages 561 to and including page 594, is a true and correct transcript of the proceedings which took place at the hearing before the Committee on Un-American Activities of the House of Representatives on April 20, 1956, in Los Angeles, California, when Thomas W. Nelson appeared as a witness.

Will you so stipulate?

Chairman ALBERT. Have you had a chance to look at it?

7 Mr. PILLSBURY. My only reservation on that is that we haven't had time to completely examine it. Mr. Nelson skimmed through it and it appears that it is a true transcript of the testimony.

I will so stipulate that it be admitted with the reservation that before we leave today any corrections may be made.

Mr. KRISTOVICH. All right, we will accept that stipulation.

*Offers in evidence*

At this time we will offer into evidence as Department Exhibit 1 said transcript.

Chairman ALBERT. So ordered and marked Exhibit 1.

Mr. PILLSBURY. We will stipulate that it may go into evidence with the provision that we may make corrections.

Chairman ALBERT. You may raise objections to any of the evidence in it?



Mr. PILLSBURY. No; merely as to the correctness of the transcript.

Chairman ALBERT. Yes.

Mr. PILLSBURY. Fine.

Mr. KRISTOVICH. We will accept that stipulation. We offer that into evidence.

Chairman ALBERT. It has been accepted.

Mr. KRISTOVICH. Thank you.

8 It is further stipulated that on May 2, 1956, while Thomas W. Nelson was employed by the County of Los Angeles, Department of Charities, as a Medical Social Worker, Permanent; a letter of discharge, a copy of which we ask be marked Exhibit 2, was personally delivered to and served on Thomas W. Nelson. Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We will accept that stipulation and offer it into evidence at this time.

Chairman ALBERT. It will be admitted and marked Exhibit 2.

Mr. KRISTOVICH. It is further stipulated that on May 10, 1956, Thomas W. Nelson addressed a letter to the County Civil Service Commission and Mr. William A. Barr, Superintendent of Charities, a copy of which we ask be marked Department Exhibit 3, requesting a hearing before the Civil Service Commission, and that this letter was received by the addressees on May 11, 1956.

Will you so stipulate?

Mr. PILLSBURY. So stipulated.

Mr. KRISTOVICH. We accept that stipulation and offer into evidence the copy of that letter as Department Exhibit 3.

Chairman ALBERT. So ordered and marked.

Mr. KRISTOVICH. At this time the Department will rest.

9 Chairman ALBERT. If you are going to have any witnesses, I am going to ask them to be sworn. Is anybody going to testify in this case?

Mr. PILLSBURY. Perhaps Mr. Nelson will testify.

Chairman ALBERT. We will wait then.

Mr. PILLSBURY. There will be no other witnesses.

*Stipulations*

On behalf of the employee, Mr. Nelson, we offer to stipulate that the employee's entire personnel record be introduced into evidence and marked Employee's Exhibit 1.

Mr. PETRIE. That would be Employee's Exhibit A.

Mr. PILLSBURY. Excuse me, marked Exhibit A and incorporated into the record of this proceeding.

Mr. KRISTOVICH. So stipulated.

Chairman ALBERT. May we also have a stipulation that in case we so desire we may make photostatic copies of the originals or put in a copy?

Mr. PILLSBURY. That is agreeable.

Mr. KRISTOVICH. We will so stipulate.

Mr. PILLSBURY. So stipulated.

Chairman ALBERT. The additional stipulation then will be admitted and marked as Exhibit A.

Mr. PILLSBURY. We further offer to stipulate and request that the record include the introductory statement made by the House Committee on Un-American Activities as to the purpose and function of their hearings, which statement was made, I believe, on April 16, 1956, in Los Angeles on the opening day of the hearings, and request when that record is obtained that it be incorporated in the hearing as Employee's Exhibit B.

Chairman ALBERT. You have reference to the scope of their enquiry and so forth?

Mr. PILLSBURY. The scope and purpose of the inquiry.

Mr. KRISTOVICH. We will so stipulate.

Mr. PILLSBURY. Perhaps to further clarify it, I understand that the statement was made by Congressman Moulder.

Mr. KRISTOVICH. Are we to understand that you are going to get a copy of that and furnish it for the record?

Mr. PILLSBURY. Yes.

Mr. KRISTOVICH. So stipulated.

Chairman ALBERT. So ordered. When the record is obtained, it will be marked as the next exhibit in order for the Appellant.

You will see that Mr. Kristovich has a chance to check it before?

Mr. PILLSBURY. Yes.

11 Now in the interest of time, perhaps we can further stipulate, even though it possibly is a duplication of the letter of Mr. Nelson marked Exhibit 3, that upon being questioned by the Congressional Committee, Mr. Nelson to all questions exercised his constitutional rights under the First Amendment of the Constitution of the United States and under the Fifth Amendment of the Constitution of the United States.

Mr. KRISTOVICH. I don't think I can so stipulate because the record speaks for itself, Mr. Pillsbury.

Mr. PILLSBURY. The employee does not care to offer any evidence or testimony at this time. He merely wishes to make a statement through counsel as to his position in regard to his discharge.

Mr. ANDREW O. PORTER. What do you mean by at this time?

Mr. PILLSBURY. We are asking for a continuance.

Mr. KRISTOVICH. Are you ready to rest?

*Counsel rests*

Mr. PILLSBURY. We are ready to rest.

Mr. KRISTOVICH. We have no further rebuttal, we rest also.

Chairman ALBERT. Your case is closed? Your case was closed when you put in Exhibit B?

Mr. PILLSBURY. Yes.

Chairman ALBERT. Now you just want to argue? . .

Mr. PILLSBURY. That is all.

*Argument by Mr. Kristovich*

12 Mr. KRISTOVICH. May it please the Commission, we wish to point out that this employee was discharged by the Department of Charities pursuant to Government Code 1028.1, which Section specifically provides as follows:

"Duty of public employee to appear before investigating body or committee and answer questions; Effect of failure, etc., to appear or answer questions. It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the State or local agency by which such

employee is employed to appear before such governing body, or a committee or subcommittee thereof, or by a duly authorized committee of the Congress of the United States, or of the legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

"(a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States or of any state.

"(b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States or of any state.

"(c) Past knowing membership at any time since September 10, 1948, in any organization which, to the knowledge of such employee, during the time of employee's membership advocated the forceful overthrow of the Government of the United States or of any state.

"(d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since September 10, 1948.

"Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law."

We submit, Your Honor, that an examination of Exhibit 1 will disclose that this employee, Thomas W. Nelson, appeared before the Un-American Activities Committee of the House of Representatives and that he failed and refused to answer questions dealing with whether or not he was a member of the Communist Party at various times commencing with 1947 as will appear in the transcript on page 568 as follows: The question is by Mr. Tavenner, Counsel for the Committee.

"Mr. TAVENNER. Were you a member of the Communist Party at any time between 1947 and 1949? That was the period you were in Japan.

"Mr. NELSON. In response to that question, Mr. Tavenner, I assert that the only purpose of your asking  
 14 that question is to intimidate me by putting out words such as communism and Communist and subversive with the idea of causing citizens to refrain from attending any sort of meetings or joining any sort of organizations for fear that at some time they may be labeled as subversive or un-American, and, thereby, causing a person to lose his employment.

"I think that that is an unjust question to put to me, and I decline to answer on the basis of the First Amendment supplemented by the Fifth."

There are other questions too numerous to take the time at this time, with the record before the Court, to give all of them.

One of the questions I will point out is at page 575 by Mr. Jackson wherein he said:

"Have you at any time been a member of the Communist Party?

"Mr. NELSON. I say again that to toss such a word as Communist and Communist Party and force and violence, associated with the name of the witness, is not good.

"And I say it is out of line, and I decline to answer on the basis of the First Amendment supplemented by the Fifth."

It is our position, if it may please the Commission,  
 15 that the record throughout indicates that this witness refused to answer questions put to him as set forth in Section 1028.1 of the Government Code. He did perhaps and in each instance raise the First and Fifth Amendments of the Constitution. It is our position that that is not sufficient grounds for him not being discharged at this time.

The charge against him is insubordination. That is, his failure to appear and answer questions. We realize, as was set forth in *Steinmetz vs. California State Board of Education* in 44 Cal. 2d 816, that he has the privilege to raise the First and Fifth Amendments, but whether he wishes to continue his employment or to raise the constitutional privileges given to him is his choice, and since under the State Law and pursuant to notice served on him he was required to answer these questions specifically, and if he did not wish to continue his

employment, naturally, he did not have to answer the questions, he could be insubordinate, and that is just what he was in this instance. On the other hand, if he felt that he would rather not answer the questions and no longer work for the Government agency, that is his privilege.

However, we contend that he cannot say in one breath that he doesn't want to obey a lawful order of his superiors because he wants to be able to raise his constitutional privileges under the First and Fifth Amendments. We say, if he wishes, 16 to raise the constitutional guarantees he has under the First and Fifth Amendments, why he has that privilege, but he certainly cannot be insubordinate while he is doing that and he clearly was in this case because he failed to answer the questions that were put to him under the State Law by a committee duly authorized by Congress.

On that basis we contend, and pursuant to the authority of *Steinmetz vs. The Board of Education* which held Section 1028.1 of the Government Code constitutional, that this employee's discharge should be upheld by the Commission.

#### *Argument by Mr. Pillsbury*

MR. PILLSBURY. If the Board please, the position of the employee, Mr. Nelson, is that when called before a Congressional Committee he exercised in proper form his basic and inherent constitutional rights; that, therefore, when Section 1028.1 of the California Government Code is applied to this employee, he is being deprived of his constitutional rights. The theory, I presume, of the County being that the exercise of the constitutional right as to free speech and privilege against self incrimination carries with it an imputation of guilt which is erroneous and disregards the historical evolution of the Fifth Amendment, the basic concept so contained; and, therefore, the Government Code Section 1028.1 is unconstitutional; that in its net effect it deprives an employee of a county, as Mr. Nelson was, of the right to exercise his 17 basic constitutional rights and places the employee in the position of either termination for refusal to answer, or when Section 1028 and other provisions of the Luckel Act are applied that he is also discharged if he does answer. The



whole concept of the County is apparently based on the fact that there is an imputation of guilt under the exercise of rights under the First and Fifth Amendments.

As previously stated, the concept, I believe, and the employee's position is, is erroneous, that the Fifth Amendment was traditionally formulated to protect the innocent as well as the guilty. The United States Supreme Court in the recent case of *Slochower vs. The Board of Higher Education of the City of New York*, stated an opinion by Justice Clark that an employee could not be fired or terminated per se for the exercise of the Fifth Amendment.

The position of the employee further is that the Act in question, the Section 1028.1, is a violation of the Fourteenth Amendment of the United States Constitution in that it is state action which deprives, when applied to the defendant for exercising his constitutional rights, deprives the defendant or in this case the employee, of his right to employment, his right to free speech without due process of law.

We further contend that the Government Code Section as applied to this employee is in its net effect a bill of attainder which is contra to the Constitution of California and the United States in that when an employee is arbitrarily singled out for questioning before a committee and he exercises his constitutional rights and then is terminated, the net effect and application of the statute is that a bill of attainder has been placed against the employee.

We further take the position that the Luckel Act, specifically Section 1028.1, is a violation of Article 1, Section 1 and Article 4, Section 25, Subsection 33 of the California Constitution in that it is special legislation which is prohibited by the Constitution when a general law would be sufficient, and, further, that the judicial function as given to a committee and under the powers granted to various employers under Section 1028.1, that there is a violation of the separation of powers concept under Article 3, Section 1 and Article 5, Section 1 of the California Constitution.

Briefly, to summarize, therefore, the position of the employee is that Section 1028.1 is unconstitutional when applied



to this employee and the aspects previously mentioned that his employment is terminated, his right to employment is terminated merely because of the exercise of his constitutional rights. On that we rest our case.

*Argument by Mr. Kristovich*

Mr. KRISTOVICH. In answer to counsel for the employee, we wish to point out that his argument as to the constitutionality of Section 1028.1 has been completely and very ably answered by the Supreme Court of the State of California in *Steinmetz vs. The State Board of Education*, 44 Cal. 2d 816, and we want it clearly understood that his concept of the theory of the County of Los Angeles, that we are imputing guilt to this employee for his failing to answer questions because he stood on his constitutional rights is absolutely erroneous.

The theory of the County's case is that this employee was an employee of the County of Los Angeles, and under Section 1028.1 of the California Government Code, he was obligated to answer the questions that were put to him, and his failure to obey that law was insubordination. The Supreme Court in the *Steinmetz* case at page 824 said, "A public employee, of course, cannot be forced to give an answer which may tend to incriminate him, but he may be required to choose between disclosing information and losing his employment."

So this employee had his choice. He had the opportunity to make a choice either to choose to continue with his public employment and obey the laws which our Supreme Court has held to be constitutional or he could say, I will be insubordinate and refuse to answer the questions, and that is exactly what this employee did.

The Supreme Court in the *Steinmetz* case also answered the argument that this was special legislation, this was a bill of attainder. All of those arguments were considered and ruled inapplicable. The Supreme Court held that the Government Code Section 1028.1 was a constitutional law and would apply in the State of California, and that decision was in July 1955, which was a long time prior to the

date that this employee appeared before the Un-American Activities Committee.

In connection with counsel's calling attention to *Slochower vs. The New York Board of Education*, decided by the Supreme Court of the United States on April 9, 1956, we wish to point out that in that case the employee, as counsel said, was arbitrarily discharged for his failing to answer the questions without an opportunity for a hearing and without following the law. The law in New York expressly provided that an employee who had tenure would be given a hearing. The County Civil Service Law provides the same thing. We have the hearing. The hearing is today. This employee has been given the opportunity to appear and explain his position. He has appeared, he has explained it, and, therefore, we have followed the requirements of due process which were not followed in the *Slochower* case.

We submit that in that case, it clearly indicated that if due process of the existing law was followed that there would be nothing wrong with the discharge of an employee who failed to answer the questions on grounds of insubordination, and we submit that here we have followed the due process.

21 The notice was served upon this employee within the ten days, he requested his hearing and we gathered here today for hearing, so we submit to the Honorable Commission that the discharge by the County of Los Angeles, Department of Charities, should be upheld:

Mr. PILLSBURY. To answer counsel's very able argument, in one respect I was erroneous in stating that the position of the County was based upon the imputation of guilt from the exercise of constitutional rights. To clarify that, I meant to state that the position of the employee is—or the position of the County is to apply, as counsel stated, Section 1028.1 on the grounds of insubordination. But, the entire legislative act, the Luckel Act, and specifically this section in question, the theory of the law is based upon an imputation of guilt for the exercise of a constitutional right before a duly constituted committee. Otherwise, how could it be claimed by a legislative act that it would be insubordinate to lawfully exercise a constitutional right? The connotation of insubordination

is always the violation or the refusal to comply with a lawful request or a lawful order of a superior during the course of employment.

In this instance Mr. Nelson is being terminated merely because, as a citizen, he exercised his constitutional rights, as did Professor Slochower, before a Congressional Committee, that he certainly has done nothing wrong. He has not  
22 been guilty of misconduct and he has not in effect been insubordinate to his superior officers in his employment in the County, and our position is that the section under which the County is acting is in and of itself unconstitutional in that it makes a citizen guilty of insubordination, and, therefore, the following loss of his employment because he exercises his basic rights.

I would further like to point out and distinguish the case of Steinmetz vs. The Board of Education, as cited by Counsel. I think the Steinmetz case in its entirety can be distinguished from Mr. Nelson's situation in that the majority opinion in the Steinmetz case expressly concludes, I think counsel will concede, that Professor Steinmetz did not exercise his constitutional rights clearly and in a proper manner when he appeared before the State Board of Education. Therefore, the portion read by counsel into the record that, "A public employee, of course, cannot be forced to give an answer which may tend to incriminate him," is predicated on the case because the majority turned on the fact that Professor Slochower did not expressly exercise a constitutional right—pardon me, correction, Professor Steinmetz did not clearly exercise a constitutional right in refusing to answer the questions propounded by the State Board of Education. Therefore, I think the entire Steinmetz case is distinguishable on its face and the conclusions upon which it is based from Mr. Nelson's case at the present time.

23 Mr. KRISTOVICH. Just to keep the Commission properly advised, I will concede that in the Steinmetz case, the Court did say this concerning these amendments on page 824.

"Petitioner's refusal to answer was not based upon a claim of privilege against self-incrimination under the Fifth Amend-

ment to the federal constitution or section 13, article 1 of the state constitution, and, accordingly, he is precluded from relying on these constitutional provisions. It is settled that a witness is required to claim this privilege, that it is a personal privilege, solely for the benefit of the witness and that it is deemed waived unless invoked."

Citing a United States Supreme Court case, "Moreover, a person may properly be required to disclose information relevant to fitness and loyalty as a reasonable condition for obtaining or retaining public employment, even though the disclosure, under some circumstances, may amount to self-incrimination.

"Pockman v. Leonard, Christal v. Police Commission, Garner v. Board of Public Works, Adler v. Board of Education." Then the quote I gave before comes, "A public employee, of course, cannot be forced to give an answer which may tend to incriminate him, but he may be required to choose between disclosing information and losing his employment." And with that we rest.

24 Mr. PILLSBURY. We keep going back and forth..

Mr. KRISTOVICH. I know we get to close. We opened.

*Argument by Mr. Pillsbury*

Mr. PILLSBURY. One last word. To make my position clear in these distinguishing factors, I submit, as previously stated, that inasmuch as the California Supreme Court concluded as a matter of fact in the Steinmetz case that Professor Steinmetz had not exercised the constitutional privilege, that the discussion which the Court engaged in regarding the exercise of constitutional privileges and the discussion as mentioned by counsel as to the self incriminatory basis and answering questions as to fitness, is pure dicta and is not necessary to the decision of the Supreme Court in the Steinmetz case, and, therefore, can be distinguished.

Chairman ALBERT. Do you want to answer that?

Mr. KRISTOVICH. We will rest.

Mr. PILLSBURY. We will rest.

Chairman ALBERT. The matter will be submitted, and, Mr. Pillsbury, as soon as you can you will see that Exhibit B is presented?

Mr. PILLSBURY. I shall, sir.

Chairman ALBERT. The Department will present the employee's record or a copy of it.

Mr. PILLSBURY. I will furnish the copy of the Committee's statement.

25 Mr. PETRIE. That is B.

Chairman ALBERT. And the Department will furnish A for you client, or a copy thereof which you can check.

Mr. PILLSBURY. Thank you.

Chairman ALBERT. Again, I want to thank you for making our work very light this morning.

The matter will be submitted.

\* \* \* Whereupon the hearing adjourned at ten-fifteen o'clock \* \* \*

26 [Reporter's certificate to foregoing transcript omitted in printing.]

27 *Employee's Exhibit B*

HEARINGS BEFORE THE COMMITTEE ON UN-AMERICAN  
ACTIVITIES, HOUSE OF REPRESENTATIVES

Date: April 16, 1956, April 20, 1956.

Place: Los Angeles, California.

28 COMMUNISM in the Los Angeles Area  
HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE OF THE COMMITTEE

ON UN-AMERICAN ACTIVITIES,

LOS ANGELES, CALIFORNIA,

*Monday, April 16, 1956.*

PUBLIC HEARING

The subcommittee met, pursuant to call, at 9:30 o'clock a.m., in Room 518, Federal Building, Los Angeles, California, Honorable Morgan M. Moulder (chairman of the subcommittee) presiding.



Present: Representatives Morgan M. Moulder (chairman of the subcommittee), Clyde Doyle, Donald L. Jackson and Gordon H. Scherer.

Staff members present: Frank S. Tavenner, Jr., counsel; William Wheeler and Courtney Owens, investigators.

Mr. MOULDER. The committee will come to order.

Let the record show that the Honorable Francis E. Walter, chairman of the full Committee on Un-American Activities of the United States House of Representatives, pursuant to the provisions of law establishing this committee, duly appointed Representative Clyde Doyle of California, on my right, Representative Donald L. Jackson of California, immediately on my left, and Representative Gordon H. Scherer of Ohio, 29 on the extreme left, and myself, Morgan M. Moulder of Missouri, chairman, as a subcommittee to conduct hearings beginning in Los Angeles today.

Mr. TAVENNER. Mr. Chairman, the system isn't working here. Wait until it gets going. I don't believe the people can hear you.

Mr. MOULDER. The full membership of the subcommittee is present.

The Congress of the United States has imposed upon this committee the duty of investigating the extent, character and objects of un-American propaganda activities in the United States, and the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or is of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

This committee has devoted much time in the past years to the investigation of the subject of communism, and the committee has endeavored to keep Congress well informed of the extent and the objects of the Communist conspiracy within this country.

In the performance of this huge task the committee, in its reports to Congress, has made in excess of 40 recommendations for legislation by Congress designed to aid in the

30 fight against this Communist conspiracy, all but a few of which have been enacted into law.

In carrying out the statutory duties imposed upon this committee, "the committee proposes to continue its investigation of the extent, character and objects of Communist activities in this general area and in all other areas to which information developed may lead, as well as to investigate all other questions in relation thereto which would aid Congress in any necessary remedial legislation."

In 1951 the committee began an investigation which resulted in a series of hearings related to the extent, character and objects of Communist Party activities, of what is known as the Northwest Section of the Communist Party, in the city of Los Angeles, commonly referred to as the Hollywood Section of the Communist Party.

This hearing will relate in part to a branch of the Hollywood Section of the Communist Party which has not heretofore been the subject of investigation by this committee.

This branch of the Communist Party, the committee is informed, is composed exclusively of musicians. Inquiry will be made as to the activities of the members of this group with special reference to their activities in the Independent Progressive Party, and the significance, if any, that such activities import.

The committee's attention has been drawn to certain  
31 public interviews with a former Soviet intelligence officer which indicates a far-reaching knowledge on his part of conditions within the Soviet Union. It is believed that his background and experience has been such that his appearance as a witness should be a valuable aid to the committee in understanding in its proper perspective Communist Party control within the arts as practiced in the Soviet Union.

This witness also will be asked to give the committee his analysis of the present Soviet policy as announced in the twentieth party congress of the Soviet Communist Party held in Moscow in February of this year.

Here it should be noted that views of other leading authorities in this field will be the subject of a committee report



which is expected to be ready for publication within the next few weeks.

Several groups entirely unfamiliar with the investigative background of this hearing have protested against the holding of this hearing.

In a communication from one of these groups it is stated: "We believe, as you have quite sincerely announced, that the subpoenaing of some 35 local musicians is unrelated to the internal problems of the Musicians Union. Yet, we believe, the timing of the committee hearing is most unfortunate and certain to create public confusion."

32 I want to take this opportunity on behalf of the committee to state concretely and with emphasis that this committee is not interested in any dispute between employers and employees or between one union and another union. Neither is it interested in the internal affairs of any union. It is a conclusive negation to the charge that this hearing is being held for the purpose of interfering in the internal affairs of a union that this investigation was begun in June of 1955, that the hearing was set for November of 1955, that because of conflicts in appointments the hearings were continued, and that the present date for the hearing was fixed by the committee at its first session in early January of this year.

The only—and I quote from this communication—"public confusion" which could result is that which certain groups opposed to this committee seemed determined to create by the unfounded charges they persist in making. And that is the only public confusion that has been created, and that has been created as a result of that.

In the course of this investigation Communist Party activities of other individuals in the field of labor, business and government have come to the attention of the staff, and will also be the subject of investigation and of this hearing.

33 The committee took extensive testimony in Chicago during December of 1955, and in the city of Washington in February and March, relating to Communist Party activities of employees in various agencies of the United States Government. During the course of those hearings testimony was received divulging the existence of heretofore un-

disclosed Communist Party cells which operated in various government agencies at various locations throughout the country.

There will be heard, before the conclusion of these hearings, certain witnesses whose identity was disclosed during the course of the above hearings.

The committee has received, since its arrival in Los Angeles, additional testimony touching on this subject from which it is apparent additional investigation will be required, and in all probability future hearings will be held in Los Angeles.

It is a standing rule of this committee that any person who is named in the course of the conduct of the hearings of this committee and who is identified or referred to as a member of the Communist Party shall be given an opportunity to appear before this committee if he so desires for the purpose of denying or explaining any testimony adversely affecting him or her.

Should such an occasion arise such an individual concerned should communicate with any member of this committee or any member of the staff.

Those present are reminded that they are guests of the committee as an agency of our government. A disturbance of any kind or audible comment during the course of the testimony, either favorable or unfavorable to any witness or to the committee, will not be tolerated.

For such infraction of this rule the offender immediately will be asked to leave the hearing room.

Under the rules of the House of Representatives of the United States, televising and broadcasting of all House committee hearings are prohibited. Still photographs are permitted while the witness is not testifying.

I might also announce that the rules of those in control of this building prohibit smoking in the hearing room during the course of the hearings.

Are you ready to proceed, Mr. Tavenner?

Mr. TAVENNER. Yes, sir.

35

*Department's Exhibit 1*

Communism in the Los Angeles Area

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE OF THE COMMITTEE  
ON UN-AMERICAN ACTIVITIES,  
LOS ANGELES, CALIFORNIA,  
Friday, April 20, 1956.

PUBLIC HEARING

A subcommittee of the Committee on un-American Activities met at 9:30 a.m., pursuant to recess, in Room 518, Federal Building, Los Angeles, California, Honorable Morgan M. Moulder (chairman of the subcommittee) presiding.

Present: Representatives Morgan M. Moulder (presiding), Clyde Doyle, Donald L. Jackson and Gordon H. Scherer.

Present also: Frank S. Tavenner, Jr., counsel; and William Wheeler and Courtney Owens, investigators.

Mr. MOULDER. The Committee will be in order.

Mr. Tavenner, would you call your first witness.

Mr. TAVENNER. Mr. Thomas W. Nelson.

Mr. MOULDER. Will you hold up your right hand and be sworn.

Do you solemnly swear the testimony which you are about to give will be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. NELSON. I do so affirm.

36 *Testimony of Thomas W. Nelson, accompanied  
by his counsel, Rose S. Rosenberg*

Mr. TAVENNER. Will you state your name, please, sir.

Mr. NELSON. Thomas W. Nelson.

Mr. TAVENNER. Will counsel accompanying the witness please identify herself for the record.

Mrs. ROSENBERG. Rose S. Rosenberg, b-e-r-g.

Mr. TAVENNER. When and where were you born, Mr. Nelson?

Mr. NELSON. I was born February 24, 1913, in Little Rock, Washington.

Mr. TAVENNER. Where do you now reside?

Mr. NELSON. In Long Beach.

Mr. TAVENNER. How long have you lived in Long Beach?

Mr. NELSON. Approximately 4 years.

Mr. TAVENNER. Will you tell the committee, please, what you formal educational training has been.

Mr. NELSON. I have been educated in the public schools of the State of Washington. I was graduated from the Washington schools in Olympia, Washington. In my grammar school education I was valedictorian of my class. From Olympia High School I was salutarian of a class of 160 pupils. I have a Bachelor's degree from Western Washington College of Education. I have had one year of graduate training at the University of Washington.

Mr. TAVENNER. When did you receive your Bachelor's degree?

Mr. NELSON. In 1937?

Mr. TAVENNER. You may proceed.

Mr. NELSON. The graduate training at the University of Washington completes my formal education.

Mr. TAVENNER. When did you complete your graduate training?

Mr. NELSON. In 1941.

Mr. TAVENNER. Will you tell the committee, please, what your employment has been since 1941.

Mr. NELSON. I have been employed by the United States Government from 1941 to 1945. I was employed by the United Nations from 1945 to 1947. I have been employed by the United States Government from 1947 to 1949. I have been employed by Los Angeles County in 1949, and I have been employed by the Monrovia-Duarte Evening High School, 1949 to 1951.

Mr. TAVENNER. What school is that?

Mr. NELSON. Monrovia-Duarte Evening High School.

Mr. TAVENNER. Where is that located?

Mr. NELSON. It is located in Monrovia, California.

Mr. TAVENNER. Were you employed as a teacher there? Is that what you mean?

Mr. NELSON. Yes, sir; that is what I mean.

Mr. TAVENNER. Very well, sir.

38 Mr. NELSON. May I proceed?

Mr. TAVENNER. Yes.

Mr. NELSON. 1951 to 1952 I was employed by the State of California. In 1952 I was employed by the Arcadia Unified School District. Since 1952 I have been employed by Los Angeles County.

Mr. TAVENNER. Did you mean that your employment between 1951 and '52 by the State of California was in the teaching profession?

Mr. NELSON. No, sir.

Mr. TAVENNER. What was the nature of that employment?

Mr. NELSON. I was a State parole officer.

Mr. TAVENNER. State parole.

What has been your employment since 1952?

Mr. NELSON. With Los Angeles County.

Mr. TAVENNER. In what capacity?

Mr. NELSON. A medical social worker.

Mr. TAVENNER. I understood you to say that from 1941 to 1945 you were employed by the United States Government. In what capacity were you employed? That is, what was the nature of your employment?

Mr. NELSON. For some months I was employed as a field grant supervisor at Yakima, Washington, where I was assigned to the administration of the federal grant program administering relief to migratory farm laborers. Later I was promoted to regional grant supervisor, supervising the program throughout the States of Oregon, Washington and Idaho, with headquarters at Portland, Oregon. When the Department of Agriculture farm security administration program was transferred to the War Food Administration office of Labor, I transferred to that agency in 1943, and continued with it until 1945.

39 Mr. TAVENNER. During that period of time did you have any assignment in the city of Washington in the Agriculture Department, Washington, D.C.?

Mr. NELSON. I did not.

Mr. TAVENNER. I believe you said that from 1945 to 1947 you were employed by United Nations. What was the nature of your employment during that period of time?

Mr. NELSON. I was a welfare officer in the Displaced Persons program, assigned to the American zone of Germany.

Mr. TAVENNER. What was the general nature of your duties there?

Mr. NELSON. The general nature of my duties was to set up and supervise the welfare programs for the victims of Nazi terror who were housed in displaced persons' camps as a military measure until such time as they might be returned to their lands of origin.

Mr. TAVENNER. I believe you told us that from 1947 to 1949 you were again employed by the United States Government. Will you tell us, please, in what capacity?

40 Mr. NELSON. I was a welfare officer with Military Government in Japan.

Mr. TAVENNER. Where were you stationed in Japan?

Mr. NELSON. I was stationed at Nagoya, spelled N-a-g-o-y-a.

Mr. TAVENNER. Will you tell the committee, please, the reason for the termination of your services in Japan?

Mr. NELSON. Chairman Moulder, in view of the introductory remark which you made to this group on last Monday, wherein you stated that it was not the intention of this committee to delve into the relationship between employer and employee, I wonder if you would ask Mr. Tavenner to kindly withdraw that question.

Mr. MOULDER. The request is denied.

(The witness confers with his counsel.)

Mr. NELSON. Will you repeat the question, please?

Mr. TAVENNER. Will you read him the question?

(The pending question was read by the reporter.)

Mr. NELSON. I would—I will decline to answer that question on the basis of the First Amendment, supplemented by the Fifth Amendment of the United States Constitution.

Mr. TAVENNER. What was the date of the termination of your services in Japan?

(The witness confers with his counsel.)



41 Mr. NELSON. In response to the question, I would say that, in my opinion, that question is beyond the area of jurisdiction of this committee as set up by your function, according to my understanding, and I respectfully decline to answer on the basis of the First Amendment supplemented by the Fifth.

Mr. SCHERER. You mean we can't investigate Communist subversion even in allied military government to the United States?

Mr. NELSON. I don't believe there is anything in the record with regard to that, Mr. Scherer.

Mr. SCHERER. There may be before we get through.

Mr. TAVENNER. Were you released from military service under the provisions of Public Law 808 as a security risk and returned to the United States from Japan?

Mr. NELSON. Mr. Tavenner, I was never in military service. I was classified 2B because of the essential nature of my work at War Food Administration.

Mr. TAVENNER. You were subject to military authority in Japan, were you not?

Mr. NELSON. I was a civilian employee of the Department of the Army, Military Government.

Mr. TAVENNER. Yes, but you were subject to military authority while there?

Mr. NELSON. I was.

Mr. TAVENNER. You were? I didn't understand you.

Mr. SCHERER. He said he was; certainly.

42 Mr. TAVENNER. Very well then. Were you returned to the United States under the provisions of Public Law 808 from Japan as a security risk?

(The witness confers with his counsel.)

Mr. NELSON. I decline to answer that question on the basis of the First Amendment supplemented by the Fifth.

Mr. SCHERER. Why were you returned?

Mr. NELSON. I decline to answer that question on the basis of the First Amendment supplemented by the Fifth.

Mr. SCHERER. I ask you direct the witness to answer the question, Mr. Chairman, as to why he was returned.



Mr. MOULDER. As requested by Mr. Scherer, the witness is directed to answer.

Mr. NELSON. I decline to answer the question on the basis of the privileges allowed me under the First Amendment, supplemented by the Fifth Amendment to the Constitution.

Mr. TAVENNER. Public Law 808 provides that, within 30 days after removal, any person shall have opportunity personally to appear before the official designated by the Secretary concerned, and be fully informed of the reasons for such removal, and to submit, within 30 days thereafter, such statements or affidavits or both as he may desire to show why he should be retained and not removed.

Did you resort to that remedy provided by Public Law 808?

Mr. NELSON. Regardless of in which manner this matter is approached, I shall continue to decline to answer.

43 With respect to this specific question, I decline to answer on the basis of the First Amendment supplemented by the Fifth.

Mr. TAVENNER. Actually you did not appeal from the decision removing you, or take any steps to avoid it, did you? (The witness confers with his counsel.)

Mr. NELSON. I decline to answer that question on the basis of the First Amendment supplemented by the Fifth.

Mr. TAVENNER. Were you a member of the Communist Party at any time between 1947 and 1949? That was the period you were in Japan.

Mr. NELSON. In response to that question, Mr. Tavenner, I assert that the only purpose of your asking that question is to intimidate me by putting out words such as communism and Communist and subversive with the idea of causing citizens to refrain from attending any sort of meetings or joining any sort of organizations for fear that at some time they may be labelled as subversive or un-American, and, thereby, causing a person to lose his employment.

I think that that is an unjust question to put to me, and I decline to answer on the basis of the First Amendment supplemented by the Fifth.

Mr. SCHERER. Since you raise the question, I am surprised that you were employed by government—true, it is

44 State and county and city government—since your dismissal from Japan under the circumstances.

That does interest me.

(The witness confers with his counsel.)

Mr. JACKSON. May I ask a question?

Mr. MOULDER. Mr. Jackson.

Mr. JACKSON. Do you consider the Communist Party to be an organization which one should feel free to join and with the membership of which one should feel free to associate?

Mr. NELSON. Mr. Jackson—

Is that the name?

Mr. JACKSON. That is correct.

Mr. NELSON. In response to that question, I would repeat that this committee is out of its jurisdiction in view of the fact that the Supreme Court has already told you fellows that you may not investigate where you do not have the right to legislate.

And, since you do not have the right to legislate in the field of associations of citizens, I feel that the question is out of order, and I decline to answer it on the basis of the First Amendment supplemented by the Fifth.

Mr. JACKSON. Let me say one thing only, Mr. Chairman:

If the Congress of the United States, or any of its committees, does not have the right to legislate with respect to federal employees, or to make inquiry into matters

45 concerning federal employees, past and present, who are members or have been members of the Communist Party, then there is certainly something very awry as far as the investigating power of the Congress is concerned.

This is one area in which there should be absolutely no question as to the jurisdiction of the Congress.

The Congress would be derelict indeed if it permitted a situation to go unnoticed in which there were past or present members of the Communist Party employed, especially in light of the action of the Congress of the United States in outlawing the Communist Party.

Mr. DOYLE. Mr. Chairman?

Mr. MOULDER. Mr. Doyle.

Mr. DOYLE. Did I understand, Mr. Nelson, that you are contending that the Congress of the United States cannot legislate in the field of military, for instance, in Japan or foreign countries; in the American military? Do I understand that is your contention, that that is not in the jurisdiction of the United States Congress?

I so understood. I was quite shocked to hear you say it.

Mr. NELSON. Mr. Chairman, I wonder if you would kindly ask the man to read my answer back to Mr.——

What is the name of the gentleman there?

Mr. DOYLE. You know who I am. I'm Doyle of California.

Mr. NELSON. Thank you.

46 Mr. MOULDER. Let's proceed.

Mr. DOYLE. No. I want the answer, please, to that. The gentleman wanted his statement read. I think it would be good to have it read.

Mr. MOULDER. All right.

As requested by the witness and by Congressman Doyle of California, will the reporter please read the answer which has caused the comment that is now being made.

(Whereupon, the record was read by the reporter, as follows:

"In response to that question, I would repeat that this committee is out of its jurisdiction in view of the fact that the Supreme Court has already told you fellows that you may not investigate where you do not have the right to legislate.

"And, since you do not have the right to legislate in the field of associations of citizens, I feel that the question is out of order, and I decline to answer it on the basis of the First Amendment supplemented by the Fifth.")

Mr. MOULDER. Very well.

Any more questions?

Mr. DOYLE. I was wondering if the gentleman cared to answer my question, if he still contended that the United States Congress did not have power and jurisdiction to  
47 legislate in the field of the American military wherever it was in the world.

I understood the gentleman to say he was subject to American military discipline in Japan.

I am on the Armed Services Committee of Congress, too, and I think we have the power to legislate regarding the American military wherever it is in the world, Mr. Nelson.

Mr. NELSON. I am of the opinion, Mr. Doyle, that by the mere fact that you are a civilian employee of the United States Government you do not lose your civil rights.

I still say that this committee does not have the jurisdiction to probe into my thoughts or my associations. And I decline to answer that question on the basis of the First Amendment supplemented by the Fifth.

Mr. MOULDER. Proceed, Mr. Tavenner.

Mr. TAVENNER. Prior to your taking a position in Japan, did you prepare an application for government service in which you set forth your personal history and certain other matters?

Mr. NELSON. I would presume that I did because it is a general routine for federal employment.

Mr. TAVENNER. Let me hand you a photostatic copy of a so-called application for employment, and ask you to look at the last page and see whether or not the signature appearing at the bottom of it, on the reverse side of that sheet,  
48 is yours.

Mr. MOULDER. What is that? The usual form? That has a number, doesn't it, Mr. Tavenner?

Mr. TAVENNER. The number is covered up, and I am unable to see it.

(Document handed to counsel for the witness.)

Mr. TAVENNER. It is equivalent to Form 57, but I don't believe it is exactly Form 57.

The sheet to which I referred the witness is the back sheet of the document on which his name appears.

Will you examine, please, the signature appearing at the bottom of the last page, and state whether or not it is your signature?

Mr. NELSON. Mr. Tavenner, my employment history has always been commented upon by my various employers.

Mr. TAVENNER. That is not responsive to my question, Mr. Nelson. The question simply was whether or not the

signature appearing at the end of the document is your signature.

Mr. NELSON. With respect to this question, Mr. Tavenner, I decline to answer on the basis of the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. MOULDER. Now may I suggest that, as I recall the question by counsel, you were first asked if you signed an application for employment. Isn't that correct?

Mr. TAVENNER. Yes, sir.

49 Mr. MOULDER. And the witness answered yes, he probably did.

Or you assumed that you had signed such application.

Therefore, it is my opinion that you probably have opened the door and waived your right to claim the protection of the First and Fifth Amendments.

The witness is directed to answer the question.

Mr. NELSON. Congressman Moulder, in response to the direction to answer the question, I respectfully decline to do so, based upon the privilege provided me under the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. MOULDER. Very well.

(The witness confers with his counsel.)

Mr. JACKSON. May I ask a question, Mr. Chairman?

Mr. MOULDER. Yes, Mr. Jackson.

Mr. JACKSON. Mr. Nelson, I note on this application also, on the last page, Question Number 26:

"Do you advocate or have you ever advocated or are you now or have you ever been a member of any organization that advocates the overthrow of the Government of the United States by force or violence?"

(The witness confers with his counsel.)

Mr. JACKSON. And in the column where an answer is required there is an X-mark under "No".

50 Was that statement a true statement at the time this application was executed?

Mr. NELSON. Mr. Jackson, the record will show that the witness has not identified this document. However, with respect

to the question, I will state that at no time have I advocated the overthrow of the government by force and violence.

Mr. JACKSON. Now the Supreme Court and the Congress have defined the Communist Party as an organization which does, in fact, advocate the overthrow of the government by force and violence.

Have you at any time been a member of the Communist Party?

Mr. NELSON. I say again that to toss such a word as Communist and Communist Party and force and violence, associated with the name of the witness, is not good.

And I say it is out of line, and I decline to answer on the basis of the First Amendment supplemented by the Fifth.

Mr. JACKSON. If it is out of line it was entirely out of line, it seems to me, for you to have signed this statement, or indicated on this statement—and I am taking it for granted that this is your application—for you to have indicated that you were never a member of any organization that advocated the overthrow of the government by force and violence, and now, at this time, decline to state whether you are a member of the Communist Party which has been officially designated by your government as an organization which does  
51 precisely that.

Mr. NELSON. Is that a comment or a question, Mr. Chairman?

Mr. JACKSON. No. That was a comment.

Mr. MOULDER. Let's proceed, Mr. Tavenner.

Mr. TAVENNER. Mr. Scherer, will you give me the date, please, of that document?

Mr. SCHERER. August 12, 1947, by Nelson, Thomas Walfrid. What is your middle name, sir?

Thomas Walfrid Nelson.

What is your middle name?

Mr. NELSON. My middle name is Walfrid, spelled W-a-l-f-r-i-d.

Mr. SCHERER. That is the way this is spelled.

Mr. TAVENNER. On the date indicated were you a member of the Communist Party?



Mr. NELSON. Mr. Tavenner, the question, as I say again, is an invasion of my rights under the First Amendment, in which a citizen is guaranteed freedom from inquiry with respect to his beliefs and associations, and I decline to answer that question on the basis of the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. JACKSON. You have no right to belong to the Communist Party. You are speaking in terms that imply that you have a constitutional right to belong to the Communist  
52 Party which has been outlawed by the Government of the United States.

You certainly have no right to belong to what has been judicially described as an international conspiracy.

You have certain rights under the Bill of Rights, but you have no right to enter into a conspiracy any more than you have a right to peddle narcotics.

Mr. NELSON. Mr. Chairman—

Mr. JACKSON. Any more than you have a right to violate any federal statute.

This business of rights of individuals to do whatever they see fit under any circumstances is a little far-fetched.

Mr. NELSON. The record will not show any organizations to which I may have belonged or any narcotics I may have peddled.

Mr. JACKSON. I have no information on the narcotics.

Mr. MOULDER. Proceed, Mr. Tavenner.

Mr. TAVENNER. During the period 1945 to 1947 when you were serving the United Nations in Germany were you a member of the Communist Party?

(The witness confers with his counsel.)

Mr. NELSON. Mr. Tavenner, in the United Nations we Americans worked alongside of our allies in an attempt to rehabilitate the damage done by thought control and terroristic measures of the Hitler regime. And I do not, again, feel that you have any right to infringe upon my rights under the First

Amendment, and I decline to answer the question on  
53 the basis of the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. SCHERER. Do you consider the Hitler regime any worse or any better than the Communist regime?

(The witness confers with his counsel.)

Mr. NELSON. Mr. Scherer, I have some rather positive opinions about the Hitler regime, based upon my observations there. I actually talked with some of the former concentration camp victims.

Mr. SCHERER. Have you heard about the concentration camps in Russia and Siberia, and persecution of the Jews by the Russians and Communists?

Mr. NELSON. I actually saw some of the bones of Buchenwald, and some of the victims who I am sure would agree with Supreme Court Justice Rutledge when he stated that these folks would certainly have appreciated the worthwhileness of a Fifth Amendment in their country when they were being harassed by their own government.

Mr. SCHERER. Now answer my question.

Would you consider the Hitler regime any worse or any better—that was my question—than the Communist-Stalin regime which now even the Communists condemn as murderous?

(The witness confers with his counsel.)

Mr. NELSON. In my opinion, Mr. Scherer, the reason why this committee brings out these terms of communism  
54 and Nazism—

Mr. SCHERER. You brought up Nazism.

Mr. NELSON. Is to infer that the witness can be tied in with them. And I would not care to express any opinion on this matter.

Mr. SCHERER. Do you deny that while you were working for the United Nations and while you were an employee of the United States Government, in the allied military government in Germany, that you were a member of the Communist conspiracy at this very moment? Do you deny that?

Mr. NELSON. I think the record will show that question has already been put and answered.

Mr. SCHERER. Let's answer it again now.

Do you deny it?

(The witness confers with his counsel.)

Mr. NELSON. Mr. Scherer, my record has been a dedication to upholding and defending the rights guaranteed under the American Constitution, both as a school teacher where I taught that the Bill of Rights is something that should be used every day and not merely honored on the 4th of July, and in my work as a social worker where we work on a democratic basis.

Mr. SCHERER. Is that the reason—

Mr. NELSON. Recognizing every individual as important, and his own dignity: he has the right to grow without government oppression.

55 I feel that my record will stand with anyone's.

Mr. SCHERER. Is that the reason MacArthur discharged you and sent you back from Japan as a security risk?

Mr. NELSON. That matter has already been handled in the record, has it not, Mr. Chairman?

Mr. SCHERER. Will you answer the question?

Mr. NELSON. I decline to answer this question on the basis of the First Amendment supplemented by the Fifth.

Mr. SCHERER. Weren't you sent back as a security risk by this government?

Mr. NELSON. I decline to answer the question on the basis of the First Amendment supplemented by the Fifth Amendment.

Mr. MOULDER. Proceed, Mr. Tavenner.

Mr. TAVENNER. Your first employment by the government was between 1941 and 1945, in the State of Washington, was it not?

Mr. NELSON. You are speaking of the Federal Government now?

Mr. TAVENNER. Yes.

Mr. NELSON. That is right.

Mr. TAVENNER. Were you a member of the Communist Party during that period of time in the State of Washington?

Mr. NELSON. Mr. Tavenner, you are approaching the same matter from a different angle, and I would continue to  
56 decline to answer that question on the basis of the privilege permitted me under the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. TAVENNER. Were you a member of the Communist Party during the period you were teaching school from 1949 to '51, inclusive?

Mr. NELSON. Mr. Tavenner, I say that a school teacher should not be subjected by a congressional committee as to his political opinions.

In my viewpoint, a school teacher should be judged on the basis of his competence and his truthfulness in teaching his classes.

Mr. TAVENNER. I take it then that you are of the opinion that a person who is subject to the directives of the Communist Party should be permitted to teach in our public schools?

Mr. NELSON. Is that a question?

Mr. TAVENNER. Yes.

Mr. NELSON. Would you repeat it, please.

Mr. TAVENNER. Will you read the question.

Mr. MOULDER. You could rephrase it. Just ask him "Do you believe."

Mr. TAVENNER. I take it, from what you have stated, that you are of the opinion that a person who is subject to the directives of the Communist Party should be permitted to teach in our public schools. Is that your view?

57 Mr. NELSON. You are asking for my opinion. I shall give it to you.

In my opinion, a school teacher—just as any other employee—should not be responsible to his employer for his political opinions or his private thoughts.

A school teacher, especially, must be free to explore all knowledge and to expose his students to the facts so that the students themselves may form their opinions.

Mr. TAVENNER. Is a person subject to the directives of the Communist Party free to do those things?

Mr. NELSON. Mr. Tavenner, still going on my own opinion, I have seen in recent years statements where teachers have been discharged from their work after having been employed for sometimes 10, 15 and 20 years. I must believe that this

teacher must have been competent if he was held on his position through all this length of time.

So I cannot say whether these specific teachers were subject to anybody directing from outside. But I do say that these teachers who have been charged by this committee and similar committees as being under the subjugation of somebody else, I submit that the fact that they did teach for such a long time and had such very fine records must be an indication that they were competent to teach and were retained by their administration as good teachers until such time as such committees as these came around and tried to bring in  
58 other factors rather than academic competence.

Mr. JACKSON. That is not necessarily true.

I know of some cases before this committee where teachers were released—not because of their competency or lack of competency but because they lied on official documents.

I think personally that a Communist teacher has got as much right in close contact with a young mind as a rattlesnake has in a baby's crib.

Mr. MOULDER. Let's proceed, Mr. Tavenner.

Mr. TAVENNER. Were you a member of the Communist Party between 1951 and '52 when you served as an officer of the State parole system for the State of California?

(The witness confers with his counsel.)

Mr. NELSON. Mr. Tavenner, I was with the State only a brief time, but even in that short time I was commended by my superior as being one of the very promising officers.

However, with respect to this particular question, I decline to answer on the basis of the privilege provided to me under the First Amendment supplemented by the Fifth Amendment of the Constitution.

Mr. TAVENNER. Are you a member of the Communist Party—

Mr. SCHERER. Pardon me just a minute.

Did you ever tell your superior who commended you that you were a member of the Communist Party?

Mr. NELSON. I decline to answer that question on  
59 the basis of the First Amendment supplemented by the Fifth Amendment.

Mr. SCHERER. When you signed your application form for employment with the State and were asked the question whether you were a member of the Communist Party or not, did you disclose that on that application?

Mr. NELSON. Do you have the application here, Mr. Tavenner? I think Mr. Scherer would like to examine it.

Mr. JACKSON. Did you sign such an application, to the best of your knowledge?

Mr. NELSON. The State of California Personnel Department has application forms as other public agencies do, and I think it would be of value to the committee to let them examine it if it is here.

Mr. JACKSON. Let me phrase it this way:

If you were required today to sign such an affidavit would you do so, stating that you were not a member of the Communist Party?

(The witness confers with his counsel.)

Mr. NELSON. The apparent intent of these remarks is to drive home the inference that this witness has done something that he should not have done.

Mr. JACKSON. It is an attempt to find out from you whether you are depending upon the Fifth Amendment in good faith.

That is the only intent. And to also attempt to find out whether or not you were a member of the Communist Party.

Mr. NELSON. Mr. Jackson, I have taught the Constitution, and I have good faith in the Constitution and all of the amendments to it.

Mr. SCHERER. I started to ask a question.

Mrs. ROSENBERG. Pardon me, Mr. Chairman. Is there a question before this witness?

Mr. MOULDER. The last question was would you sign such an application today, or affidavit, that you were not a member of the Communist Party. I believe that is the question propounded by Mr. Jackson.

Mr. JACKSON. That is the question.

Mr. MOULDER. I believe his question was:

If you were signing an application for employment with the State of California, which provided or asked the question



whether or not you were a member of the Communist Party, would you sign such an affidavit.

I believe substantially that is the question.

Mr. JACKSON. That is substantially it. I want to know whether or not he would make a statement today on an official form which was a requisite of employment that he was not a member of the Communist Party.

(The witness confers with his counsel.)

Mr. NELSON. Mr. JACKSON, you put the question, and the form is not before this committee, and is a matter of  
61 conjecture. And I would decline to answer.

Mr. JACKSON. Is it a matter of conjecture?

Mr. NELSON. It is not a matter of past history.

Mr. JACKSON. Would you sign it?

If you are, as you say, a good loyal American citizen with nothing in your background of which to be ashamed, do you feel that you can't tell the committee of the Congress whether or not you would state affirmatively that you were not a member of the Communist Party?

(The witness confers with his counsel.)

Mr. NELSON. Mr. JACKSON, I have been and I am now a good loyal American citizen.

Mr. JACKSON. Are you a member of the Communist Party?

Mr. NELSON. And I am not required to answer such questions as the one just now put to me by you, sir.

Mr. JACKSON. I shall put a similar one.

Are you a member of the Communist Party today?

Mr. NELSON. As I told Mr. Tavenner, this matter may be approached from various angles, but I still say that the Constitution is in effect, and I decline to answer on the basis of the First Amendment supplemented by the Fifth.

Mr. MOULDER. Any more questions, Mr. Tavenner?

Mr. TAVENNER. I have no further questions.

Mr. MOULDER. Mr. Doyle, have you a question?

Mr. DOYLE. Yes; I have just a couple.

62 I think I made a record of the witness' testimony of the agencies in government in which he worked, and manifestly he has had a very rich and varied experience and a very valuable experience.

Mr. NELSON. Thank you, sir. I agree with you.

Mr. SCHERER. I don't think the government has had, though.

Mr. DOYLE. And apparently he is very well informed on the history of nations and of government, including the history of the Communist Party. That is very evident.

I notice, Mr. Nelson, that you worked in the State of Washington in 1941 to 1945 for the Department of Agriculture in relief work. I am sure you know that in April of 1945 Earl Browder was kicked out of the American Communist Party.

Shortly thereafter certainly every thinking adult, American citizens, should have been charged with knowledge that the Communist Party program in the United States and in the world was conspiracy, subversively, and certainly for the last several years it has been a matter of knowledge to you as a school teacher and a student of government that the United States courts and Congress have declared the Communist Party in America to be an international conspiracy based upon the use, if necessary in their judgment, of force and violence.

(Representative Donald L. Jackson withdrew from the hearing room at this point.)

Mr. DOYLE. The reason I mentioned that is I know  
63 that you know that history perhaps as well as I do or better. But I know that is a matter of history, and so do you.

The thing that amazes me, sir, very frankly—the thing that amazes me—is that, even recognizing your rights to plead the First and Fifth Amendment—which I certainly do, and all the committee does if it is done in good faith and honestly—the thing that amazes me is that you would come here this morning, and even this morning not be in a position where you could honestly say you are not today a member of the Communist Party.

That is the thing that amazes me.

I will make allowance for thinking, patriotic American citizens having joined the Communist Party back in '41, '42, '43, '44, '45, and, yes, some of them, '46 before it was known that the Communist Party was a conspiracy founded upon force and violence use if and when they chose to use it.

Mr. SCHERER. Before it was generally known.

Mr. DOYLE. Before it was generally known.

But you, sir, from your training, knew it ahead of most of us. From your reading and from your statement I can draw certain deductions based upon my own experience.

And so there came a time, in my book, when you as a school teacher and a patriotic American citizen should have withdrawn from the Communist Party.

By that I am inferring what I know as a matter of practical experience, that there was a time when you were pretty close to it. You haven't admitted ever joining it, but I am assuming that you were a member of the Communist Party at one time for the purpose of this statement and this question.

I am not inferring it. I realize that under the law there is no inference to be drawn; there is no presumption to be drawn.

Mr. NELSON. Thank you, sir. I am glad you said that.

Mr. DOYLE. We know what the decisions of the courts are as well as you, sir.

Mr. SCHERER. That doesn't prevent us from relying on other sworn testimony, however, in arriving at a conclusion of this man's membership in the party.

Mr. DOYLE. No.

Mr. SCHERER. There is no question about it, Mr. Doyle. You don't have to have an inference.

Mr. DOYLE. The thing that amazes me, sir, is that you as a school teacher in the State of California, and a State official and former government official of the United States Government in foreign countries and in this country, have not put yourself in the position yet where you could come honestly to Congress—your Congress—about which you have been teaching school children—it might have been some of my children,

which makes me shiver to think of it—that you haven't yet put yourself in the position where you could frankly say to the United States Congress, "Yes, I was a member of the Communist Party—" if you were "—back in '42, '43, '44, '45 and '46 even, but I got my belly full and I got out."

That is the thing that amazes me, Mr. Nelson, that a man with your brilliancy isn't able to say this morning, to come and say, "No, I am not a member of the party."

You may think that is an invasion by us to make that inquiry.

Mr. NELSON. I do; yes.

Mr. DOYLE. I see you do. That is what amazes me. That is what amazes me, to be frank with you, because I used to be a member of the California State Board of Education, and I know some of the problems we had.

One more statement, Mr. Chairman. And may I make this observation—

Mr. NELSON. May I express my amazement also, Mr. Moulder?

Mr. MOULDER. It is unfortunate, but I hope we don't—

Mr. NELSON. I am really amazed at the activities of this committee.

Mr. MOULDER. I can understand the temptation on the part of the witness to reply to a lecture or—

Mrs. ROSENBERG. May I respectfully request—

66 Mr. MOULDER. Each member has a right to conduct himself as he pleases. I do the best I can to keep order and an orderly procedure.

Mrs. ROSENBERG. May I respectfully request that the witness be permitted to answer an argument that was put to him.

If you are calling—

Mr. DOYLE. I am not arguing to him, Madam Attorney. I am making a statement of my position.

Mrs. ROSENBERG. I wish this witness would have a like privilege.

I respectfully urge that you give him the privilege that your colleagues have been given all morning.

Mr. MOULDER. Mr. Doyle will proceed.

Mr. DOYLE. I just wish this witness would understand my position as a mere congressman.

I recognize your right and every American citizen's right to think what he pleases and to preach what he pleases and to write what he pleases and to live the way he pleases. But he has got to do it within the four corners of the Constitution of the United States, and every corner.

And I don't recognize your right, nor the right of any other American citizen to continue to be a member of any organization or any association that has been declared a conspiracy by the Congress of the United States, because that makes it illegal.

67 So I say to you, sir, as one American to another, I don't recognize your right to come to any group of United States Congressmen, lawfully on an investigation, and claim it is your right—if you want to claim it—to still be a member, if you ever have been, of a conspiracy that has been declared illegal by the Congress of the United States. And I hope you will get into a position where you don't disagree with me, at least on that one point.

Mr. NELSON. Mr. —

Mr. MOULDER. I must say, of course, that we will agree that you have the right to claim the privilege, as Mr. Doyle says, and we all agree that you have the right to claim the privilege and decline to answer anything under the provisions of the Constitution.

But I think his point was that he is criticizing your decision and judgment in so proceeding.

Mrs. ROSENBERG. Which he has no right to do, Mr. Chairman, may I say for the record.

And he has no right to draw inferences, which he has consistently drawn.

Mr. MOULDER. All right.

Now what do you have to say?

Mr. NELSON. I would certainly like to express my amazement also, Mr. Doyle.

Only a few days ago I was sitting in this room when  
68 I heard the congressman speak of some of the eminent citizens of this community as rats and mice.

Mr. DOYLE. No; I didn't. I deny it. You heard nothing of the kind.

Mr. NELSON. I heard it.

And I must say that if Mr. Doyle fancies himself as a political pied piper who is going to take the mice out of the city of Hamlin, constitutional liberties, he had better take a second look.

I do not accept the inferences that have been made that because a citizen, in his own protection, from having observed how this committee operates, answers the questions on the basis of the First Amendment and the Fifth Amendment, that any inference unfair to him should be drawn.

The Supreme Court has spoken on that, and I think that should be enough to silence this sort of activity.

And I hope that my opportunity of being here today can help to hasten the day when this committee will no longer be in existence.

Mr. MOULDER. If the officer can identify any person responsible for that demonstration, they will be, please, removed from the hearing room.

Mr. DOYLE. This gentleman right here with the glasses with the two ladies on either side of him, joined in it.

This man right here, looking at me.

69 Mrs. ROSENBERG. Is there a question before the witness, Mr. Chairman? Is there a question before the witness?

Mr. MOULDER. There is no question pending.

(Representative Donald L. Jackson returned to the hearing room at this point.)

Mr. MOULDER. Mr. Jackson?

Mr. JACKSON. No questions.

Mr. MOULDER. Mr. Scherer, do you have any additional questions?

Mr. SCHERER. No.

Mrs. ROSENBERG. Is the witness excused?

Mr. MOULDER. Mr. Tavenner?

Mr. TAVENNER. I have no further questions.

Mr. MOULDER. The witness is excused.

You may claim your witness fees with the clerk, who is sitting at the desk immediately behind you.



# EMPLOYEE'S EXHIBIT "A"

COUNTY OF LOS ANGELES

PERSONNEL DIVISION

ROOM 3000A ADAMS STREET  
LOS ANGELES COUNTY GENERAL HOSPITAL

DEPARTMENT OF CHARITIES

## EMPLOYMENT AUTHORIZATION March 4, 1949

NAME: NELSON, Thomas W.

EMPLOYEE NO. 66440

DEPT. NO. 21-5 (2-18)

ADDRESS: 420 S. Westlake L.A., 72 4144

DIVISION: Metro South

ITEM & STEP

TITLE & STATUS

SCHEDULE RATE NO.

ORG. SALARY

NET SALARY

7770A-1 Sec. Case Wkr., Temp. (MGRS) 24 211. 211.

(Sub Margaret A. Colbert, Sec. 231(1))

WITHHOLDING TAX CODE: 49-3

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

AUTHORITY:

RETIREMENT PERCENTAGES

Penal Reg. Num. 664401 312/2004 (MGRS)

Pen Reg. Sec. Wkr.

EFFECTIVE DATE: March 2, 1949

CS-SERVICE 713-OUT  
- FILE  
- DIVISION HEAD

EMPLOYEE  
- BPA-1  
- BPA-2

LACSH 222 20M 9-49

*Wm. A. Libby*

10

SECURE CLOCK CARD FROM PAYROLL DIVISION BEFORE REPORTING FOR DUTY. PRESENT CLOCK CARD WITH COPY OF THIS AUTHORIZATION TO YOUR SUPERVISOR WHEN YOU REPORT FOR DUTY. EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH. UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES ON A DAILY RATE OF PAY ARE PAID TWICE A MONTH.

PERSONNEL DIVISION, LOS ANGELES

COUNTY OF LOS ANGELES

1/07

Department of Corrections

PERSONNEL DIVISION  
WORK SHEET

☒ New ☐ Change ☐ Return to Duty ☐ Triple entry (Permanent - Temporary) ☐ Correction

Employee name Nelson, Thomas W. Date 3-3-

Employee number 490 B. WESTLAKE, L.P. Division code 21-3 Job 2-11

Address 490 B. WESTLAKE, L.P. Phone 2-4144

Classification Title See Case Work Next Step Above See Case Work

Clock Location 7770A Step 1

Schedule no. 24 Reg. Salary 211 Net Salary 211 Union Code 100 ☐ Int. ☐ Soc.

Ten Class 49-3 Retirement See Case Work Effective Date 3-3-47

Certif. no. 3 Exp. no. C Reg. no. (145471)

Status Code 3 Access'n Code C Previous County Service See Case Work

Date entered County Service See Case Work

Remarks New Reg. See Case Work (145471)

FOR PERSONNEL USE ONLY

☐ Item noted 10314

☐ Index noted 10318

☐ Loyalty form Filed

☐ Vacc. form

☐ Enlist. card

☐ Regis. card

☐ 60 day order

☐ Leave of abs.

☐ Minut. letter

☐ Trans. letter

☐ Cancel M/L

☐ Vet. trainee

☐ O/T letter

☐ Release Filed

☐ Return to 10347

See Case Work  
Personal Manager - Corrections

Page number 10 By See Case Work

FOR PAYROLL USE ONLY

Hours paid	Short time (4 hours)
Holiday hours	Vac. hours
O.T. hours	C.O.S.L. hours
75% S.L. hours	100% S.L. hours
50% S.L. hours	

By See Case Work

County of Los Angeles

Bureau of Public Assistance

## EMPLOYEE'S FACE SHEET

Date March 2 1949NAME NELSON, THOMAS W.  
(Last) (First) (Middle) ( Maiden Name if Women)ADDRESS 420 S. WESTLAKE, LOS ANGELES Telephone FE 4114  
(Number) (Street) (City)Married ☒ Single ☐ Divorced ☐ Widowed ☐ Separated ☐Male ☒ Female ☐ Race WHITECitizen of U.S. YES Yrs. in U.S. 3 1/2 Yrs. Res. in Calif. 3 <sup>YRS.</sup> Res. in L.A. Co. 2 <sup>YRS.</sup>  
(Yes or No)GRACE M. NELSON 420 S. WESTLAKE, LOS ANGELES  
(Name of Employee's Spouse) (Address)DECHASE   
(Name of Employee's Father) (Address)ANNIE F. NELSON 903 FOOTE ST., OLYMPIA, WASH.  
(Name of Employee's Mother) (Address)

## EDUCATION

Common School 3-4-5-6-7-8-9-10-11-12 Graduate YES Name of School WASHINGTON Age at leaving 19  
(Circle last grade completed) (Yes or No)High School 1-2-3-4-5-6-7-8-9-10-11-12 Graduate YES Name of School OLYMPIA Age at leaving 17  
(Yes or No)Course Taken COMMERCIAL

Remarks:

College or

University COLUMBIA 1-2-3-4 Graduate YES Name of School UNIVERSITY OF WASHINGTON Degree B.A.  
(Yes or No)Major Subject EDUCATION Minor Subject SOCIAL SCIENCE

Remarks:

Graduate Work YES No. of units 15 Name of School UNIVERSITY OF WASHINGTON Degree B.A.Courses Taken SOCIAL CASE WORKPUBLIC WELFARE ADMINISTRATIONPHYSICAL INFORMATION FOR SOCIAL WORKERS

Remarks:

Business or Correspondence Courses NONE

Remarks:

Now Studying (Courses) NONE Name of School

Remarks:

For what profession or occupation are you qualified, by reason of education, training, or experience? SOCIAL CASE WORK, ELEMENTARY SCHOOL TEACHER, PUBLIC WELFARE ADMINISTRATIONDo you own a car? NO Do you drive? YES

If necessary would you be willing to drive your car in County Service?



1731

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COUNTY OF LOS ANGELES

PERSONNEL DIVISION

ROOM 5000A ADAMS BMT  
LOS ANGELES COUNTY GENERAL HOSPITAL

REQUIREMENT OF CREDIT

CHANGE NOTICE

March 16, 1949

EMPLOYEE NO.  
66410

DEPT. M21-3 (9-18)

DIVISION Metro South

NAME: NELSON, Thomas V.

ADDRESS: 489 S. Westlake L.A., PS 4144

NET  
SALARY

SCHEDULE  
RATE NO.

ORG.  
SALARY

TITLE & RATE

ITEM & DATE

FROM:	77704-1	Sec. Case Mgr. Temp. (MIMS)	94	211.	211.
		(Sub Margaret A. Colbert, Sec. 251(1))			
TO:	77704-1	Sec. Case Mgr. Temp. (MIMS)	94	211.	211.
		(Sub Cecilia de Rodriguez, Sec. 251(1))			

WITHHOLDING TAX CODE 49-3

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

RETIREMENT PERCENTAGE

AUTHORITY: Transfer to another sub 6647000  
Employee (M21-3)

EFFECTIVE DATE: March 4, 1949

*Wm. A. Fisher*

CO-SERVE NOTICE

EMPLOYER ON A MONTHLY BASIS OF PAY ARE PAID ONCE A MONTH.  
UNLESS REQUEST IS MADE FOR THREE A MONTH PAY. EMPLOYED ON A  
DAILY BASIS OF PAY ARE PAID THREE A MONTH.

LAST NAME: 66410



County of Los Angeles

Department of Corrections

## PERSONNEL DIVISION

FORM 0001

☐ New ☒ Change ☐ Return to Duty ☐ Triple entry (Permanent-Regularity) ☐ Correction
Employee Name McLennan, Thomas W. Date 3-31Employee Number 66410 Division Code 21-3 Sub 2-16Address 420 S. Western, L.A. Room 7c 4144Classification Title Sec Casa WokeClock Location Det-Asilia de Rodriguez Room 87770a Step 1Schedule No. 34 Ord. Salary 211 Net Salary 211 Night. Code ☐ Incl. ☐ Del.Pay Class 49-3 Anticipation - Effective Date 8-16-79Certif. No. 498 Exp. No. 11 Exp. Dt.Status Code 2 Account's Code Previous County Service Yes ☐ No ☐Date entered County Service 8-16-79Remarks: See Pay Sec Woke.

## FOR PERSONNEL USE ONLY

<input checked="" type="checkbox"/>	Item noted	<u>10/3/79</u>
<input checked="" type="checkbox"/>	Index noted	<u>10/3/79</u>
<input type="checkbox"/>	Loyalty form	
<input type="checkbox"/>	Verif. form	
<input type="checkbox"/>	Entra. card	
<input type="checkbox"/>	Regis. card	
<input type="checkbox"/>	30 day ems	
<input type="checkbox"/>	Leave of abs.	
<input type="checkbox"/>	Enlist. letter	
<input type="checkbox"/>	Trans. letter	
<input type="checkbox"/>	Cancel R/L	
<input type="checkbox"/>	Ver. trainee	
<input type="checkbox"/>	G/T letter	
<input type="checkbox"/>	Release	
<input type="checkbox"/>	Return to	

Page number

101

## FOR PAYROLL USE ONLY

Hours paid	Short time (6 hours)
Holiday hours	Vac. hours
G.T. hours	C.O.D.L. hours
700 S.L. hours	800 S.L. hours
800 S.L. hours	



County of Los Angeles

## PERSONNEL DIVISION

Room 2080-A

Los Angeles County General Hospital

Department of Charities

90

## RESIGNATION

Date May 18, 1968

I hereby resign from my position as Social Case Worker in the Department of Charities, Bureau of Public Assistance, the effective date to be computed on the basis of my last working day 5-15-68. My reason for resigning is as follows: Personal convenience (Date) \_\_\_\_\_

Noted: \_\_\_\_\_

Division Head or District Director \_\_\_\_\_

Personnel Office Use Only

Last day worked 5/15/68Regular vacation 11

Leaving vacation \_\_\_\_\_

Days off \_\_\_\_\_

Holidays \_\_\_\_\_

Overtime \_\_\_\_\_

Signature

Forwarding Address

*Clearing for my  
credit 5-15-68*

N-4329 LABOR 4-49 m

COUNTY OF LOS ANGELES

PERSONNEL DIVISION  
ROOM 200A ADULT UNIT  
LOS ANGELES COUNTY GENERAL HOSPITAL

DEPARTMENT OF CHARITIES

TERMINATION OF EMPLOYMENT May 25, 1949

NAME: NELSON, Thomas W.

EMPLOYEE NO. 60410

ADDRESS: 420 S. Westlake L.A., PB 4144

DEPT. NO. 21-3 (2-18)

DIVISION: Metro South

ITEM & STEP

TITLE & STATUS

SCHEDULE RATE NO.

ORG. SALARY

NET SALARY

7772a-1

See. Case Worker, Temp.  
(Sub-Cecilia de Rodriguez, Sec. 251(1))

24

\$11.

\$11.

REASON: Resigned - Personal Reasons

WITHHOLDING TAX CODE: 40-3

RETIREMENT PERCENTAGE

EFFECTIVE DATE: May 10, 1949  
Last day worked 5-19

Item noted	UP 5/19/49
Index noted	UP 5/19/49
TCC & C1. to Payroll	5/19/49
Form 25 to CSC	

CC-PAYROLL  
" SERVICE  
" FILE  
" DIVISION  
" EMPLOYEE  
" KEY CUSTODIAN

1.000492: H. Glaine - Mr. Delang

B.P.A.

63

*Rev. Pibet*

PERSONNEL DIVISION, CHARITIES

[illegible]

**REMARKS**

Use this space for information which you feel may be necessary for a more adequate understanding of the probationer or his work. For example: additional facts to support a rating or a recommendation; reasons for requesting comment to discharge or reassign the probationer; favorable or unfavorable aspects of the probationer's work which have particularly impressed you; reasons for any disagreement with another reporting officer; probable cause of shortcomings in the probationer's performance; or reasons for the need of a review of the classification of the probationer's position. Sign all statements which you make or to which you concur.

**INSTRUCTIONS FOR COMPLETION OF PART I**

On the reverse side of this form is a list of items on which the probationer is to be rated. Each reporting officer is to examine this list and add any other items which he believes should be considered. He is then to consider carefully the extent to which the probationer meets the requirements of his position as demonstrated by performance on the job, and indicate his conclusions according to the following procedure:

The Immediate Supervisor is to place a check after each item in the most appropriate column (N, S, M, or E).

The Reviewer is to review the items as checked by the Immediate Supervisor. The Reviewer is not to make any item which he has been checked correctly by the Immediate Supervisor. However, the Reviewer should check any item which he may do so by placing the proper "Review-Symbol" (N, S, M, or E) in the "Reviewer" column.

The Department Head, if he so desires, may indicate how he is to be rated by placing a check mark in the "Department Head-Symbol" (N, S, M, or E) in the "Department Head" column.

**RATING STANDARDS FOR USE IN COMPLETION OF PART II**

Supervisory shall be the rating given to any employee when he meets or exceeds the requirements of his position.

Satisfactory means: Employee whose effectiveness in his position is such that he is a "Satisfactory" or "Very Satisfactory" member of the "Satisfactory Group" whose effectiveness in his position generally meets, but occasionally falls below, the requirements of the position.

Partial Satisfactory shall be the rating given to any employee in the "Satisfactory Group" whose effectiveness in his position generally meets, but occasionally falls below, the requirements of the position.

Unsatisfactory shall be the rating given to any employee in the "Unsatisfactory Group" whose effectiveness in his position consistently meets the requirements of the position.

Very Unsatisfactory shall be the rating given to any employee in the "Very Unsatisfactory Group" whose effectiveness in his position consistently meets, and frequently exceeds, the requirements of the position.

Outstanding shall be the rating given to any employee when the evidence can be presented to show that his effectiveness in his position consistently exceeds the requirements of the position.

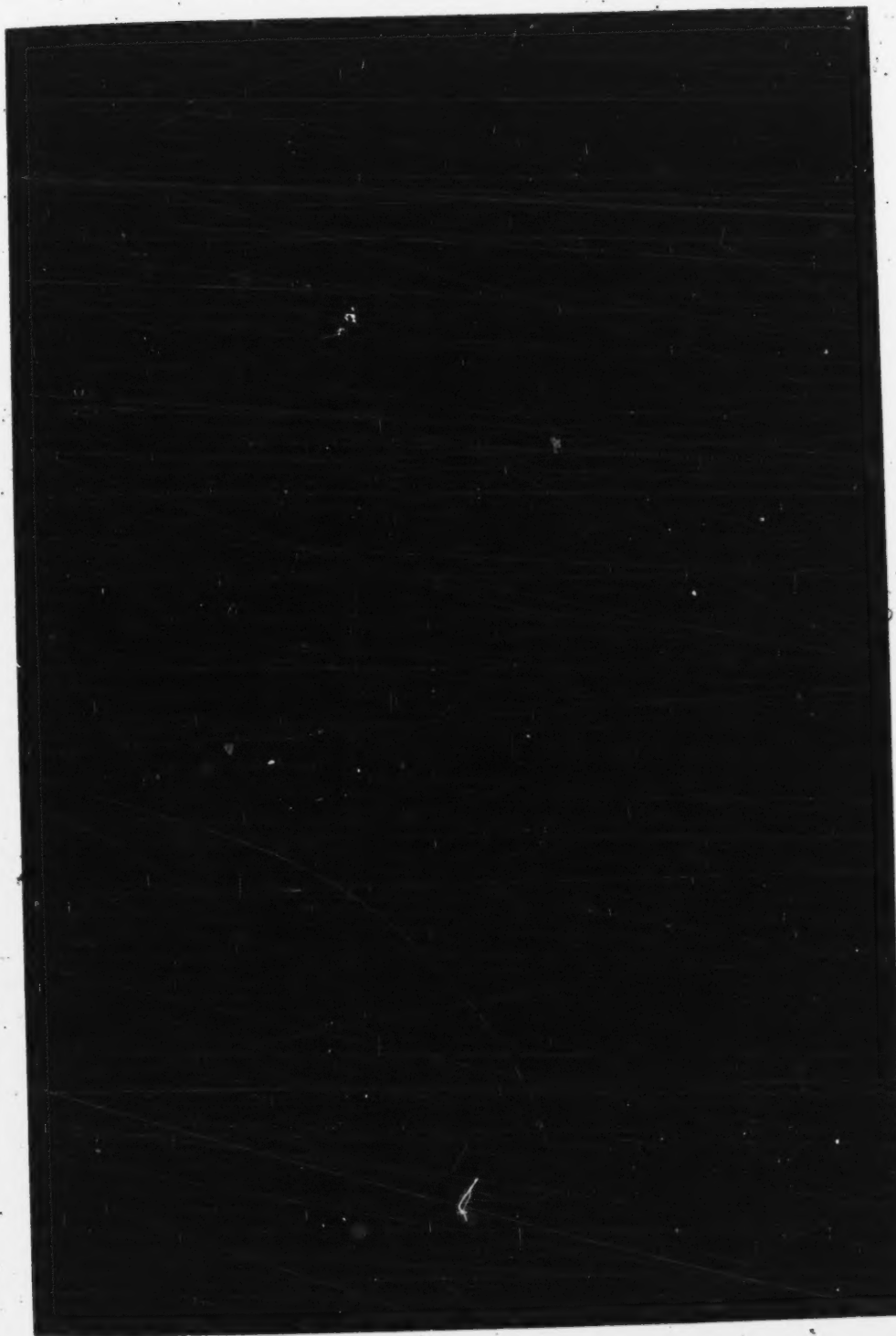


[82]

[illegible]

NAME OF EMPLOYER		ADDRESS OF EMPLOYER	DATE OF EMPLOYMENT	TYPE OF EMPLOYMENT	REASON FOR EMPLOYMENT	REASON FOR TERMINATION	REASON FOR REEMPLOYMENT
1. NAME OF EMPLOYER		2. ADDRESS OF EMPLOYER		3. DATE OF EMPLOYMENT	4. TYPE OF EMPLOYMENT	5. REASON FOR EMPLOYMENT	6. REASON FOR TERMINATION
7. TYPE OF WORK		8. EMPLOYER'S NAME		9. ADDRESS OF EMPLOYER		10. DATE OF EMPLOYMENT	
11. NAME OF EMPLOYER		12. ADDRESS OF EMPLOYER		13. DATE OF EMPLOYMENT		14. TYPE OF EMPLOYMENT	
15. NAME OF EMPLOYER		16. ADDRESS OF EMPLOYER		17. DATE OF EMPLOYMENT		18. TYPE OF EMPLOYMENT	
19. NAME OF EMPLOYER		20. ADDRESS OF EMPLOYER		21. DATE OF EMPLOYMENT		22. TYPE OF EMPLOYMENT	
23. NAME OF EMPLOYER		24. ADDRESS OF EMPLOYER		25. DATE OF EMPLOYMENT		26. TYPE OF EMPLOYMENT	
27. NAME OF EMPLOYER		28. ADDRESS OF EMPLOYER		29. DATE OF EMPLOYMENT		30. TYPE OF EMPLOYMENT	
31. NAME OF EMPLOYER		32. ADDRESS OF EMPLOYER		33. DATE OF EMPLOYMENT		34. TYPE OF EMPLOYMENT	
35. NAME OF EMPLOYER		36. ADDRESS OF EMPLOYER		37. DATE OF EMPLOYMENT		38. TYPE OF EMPLOYMENT	
39. NAME OF EMPLOYER		40. ADDRESS OF EMPLOYER		41. DATE OF EMPLOYMENT		42. TYPE OF EMPLOYMENT	
43. NAME OF EMPLOYER		44. ADDRESS OF EMPLOYER		45. DATE OF EMPLOYMENT		46. TYPE OF EMPLOYMENT	
47. NAME OF EMPLOYER		48. ADDRESS OF EMPLOYER		49. DATE OF EMPLOYMENT		50. TYPE OF EMPLOYMENT	
51. NAME OF EMPLOYER		52. ADDRESS OF EMPLOYER		53. DATE OF EMPLOYMENT		54. TYPE OF EMPLOYMENT	
55. NAME OF EMPLOYER		56. ADDRESS OF EMPLOYER		57. DATE OF EMPLOYMENT		58. TYPE OF EMPLOYMENT	
59. NAME OF EMPLOYER		60. ADDRESS OF EMPLOYER		61. DATE OF EMPLOYMENT		62. TYPE OF EMPLOYMENT	
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83. NAME OF EMPLOYER		84. ADDRESS OF EMPLOYER		85. DATE OF EMPLOYMENT		86. TYPE OF EMPLOYMENT	
87. NAME OF EMPLOYER		88. ADDRESS OF EMPLOYER		89. DATE OF EMPLOYMENT		90. TYPE OF EMPLOYMENT	
91. NAME OF EMPLOYER		92. ADDRESS OF EMPLOYER		93. DATE OF EMPLOYMENT		94. TYPE OF EMPLOYMENT	
95. NAME OF EMPLOYER		96. ADDRESS OF EMPLOYER		97. DATE OF EMPLOYMENT		98. TYPE OF EMPLOYMENT	
99. NAME OF EMPLOYER		100. ADDRESS OF EMPLOYER		101. DATE OF EMPLOYMENT		102. TYPE OF EMPLOYMENT	

and the present day  
 Federal House in  
 when he was under  
 U. S. Dept. of Agriculture in (California)  
 Oregon. He said it was merely a common  
 organizing effort affiliated with the Oregon  
 Hill School. He is with Communist or  
 Political parties. He believes it is now  
 called United Public Workers, left the  
 organizing team in 1944. Stated he liked  
 the sound on Loyalty Act when he was formerly  
 employed by Dept of Labor or Public Employment.



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COUNTY OF LOS ANGELES

PERSONNEL DIVISION

ROOM 3204 ACUTE UNIT  
LOS ANGELES COUNTY GENERAL HOSPITAL

April 1, 1952

DEPARTMENT OF QUALITY

# EMPLOYMENT AUTHORIZATION

NAME: **NELSON, Thomas W.** EMPLOYEE NO. **66407** DEPT. NO. **21-0 (44)**  
 ADDRESS: **1606 Brycedale Ave., Duarte Elliott 89190** DIVISION: **Med. Soc. Serv.**

## ITEM & STEP

## TITLE & STATUS

## SCHEDULE RATE NO.

## GRD. SALARY

## NET SALARY

5173A-1 Medical Social Worker, Temp. (MEMO) 30 288. 288.

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS  
 AUTHORITY: 318 #2332

WITHHOLDING TAX CODE 52-4

RETIREMENT PERCENTAGE:

Former employee B.P.A. May 1949  
 Pend. Unassembled Exam.

EFFECTIVE DATE: April 1, 1952

- CC-SPA-1
- FILE
- SERVICE REPORT
- BPA-2
- DIVISION HEAD
- EMPLOYEE

LACSH 324 300 2-61

SECURE CLOCK CARD FROM PAYROLL DIVISION BEFORE REPORTING FOR DUTY. PRESENT CLOCK CARD WITH COPY OF THIS AUTHORIZATION TO YOUR SUPERVISOR WHEN YOU REPORT FOR DUTY. EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH. UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES ON A DAILY RATE OF PAY ARE PAID TWICE A MONTH.

*Ann. Libert*

PERSONNEL DIVISION



County of Los Angeles

PERSONNEL DIVISION

Department of Corrections

## VORE SHEET

Date 4-1-52
☒ New ☐ Return to Duty ☐ Cancellation of Notice, Signed \_\_\_\_\_  
☐ Change ☐ Triple Entry (Pun-Temp) ☐ Correction of Notice, Signed \_\_\_\_\_

Employee Name 1-10 <u>NELSON, Thomas W.</u>	Reg. No. 10-20
Address <u>1606 Bryn Mawr Ave. Los Angeles</u>	Home Phone <u>447-1152</u>
Effect. Date 24-29 <u>4-1-52</u>	Period Medical S in 24 <input type="checkbox"/> Clerk <input type="checkbox"/>
Cont. Ser. Date Chg. Only 1 in 33 Check: <input type="checkbox"/>	Overseas Pay 1 in 24 <input type="checkbox"/>
Next Susp Adv. Date 64-65	Clock Log. 64-65
	Str. Code 51 <u>and</u>

Position	
Designated Sub.	Assigned Sub.
Item	Shop
Ord. Salary	Net Salary
Master. Code	Tax Code
	State Code

Position <u>Medical Officer</u>	
Designated Sub.	Assigned Sub.
Item	Shop
Ord. Salary	Net Salary
Master. Code	Tax Code
	State Code

Person's Code 74 <u>C</u>	Previous County Service Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Continuation Service Date 75-76 <u>5-22-51</u>
Retirement %	Certif. No.	Emp. No.
<input type="checkbox"/> Approved for Recall	<input type="checkbox"/> U.S.C. & F.B.	<input checked="" type="checkbox"/> Paid. Suspended <u>Temporary</u> Status
<input type="checkbox"/> Name Change Only	<input type="checkbox"/> Temp. - Pun. Reinst. Paid. App. of CEC	<input type="checkbox"/> Child Sup. Chg.

Remarks: Former employee - B.P.A. - May 1949

FOR PERSONNEL USE ONLY	
<input checked="" type="checkbox"/> When Hired <u>4/1/52</u>	
<input checked="" type="checkbox"/> Index Noted <u>4/1/52</u>	
<input checked="" type="checkbox"/> Loyalty Form <u>Complete</u>	
<input type="checkbox"/> Vac. Form	
<input type="checkbox"/> Notice Card	
<input type="checkbox"/> Regis. Card	
<input type="checkbox"/> 40 Day Ends	
<input type="checkbox"/> Leave of Abs.	
<input type="checkbox"/> Reinst. Letter	
<input type="checkbox"/> Trans. Letter	
<input type="checkbox"/> Cancel M/L	
<input type="checkbox"/> Ver. Trainee	
<input type="checkbox"/> U/T Letter	
<input type="checkbox"/> Release	
<input checked="" type="checkbox"/> F.P. <u>5-1-52</u>	
<input checked="" type="checkbox"/> <u>W.P. 5-1-52</u>	

Page No. 1 of 1

Chas. D. Riley  
Personnel Manager - Corrections

FOR PAYROLL USE ONLY		
Acc. Hrs. for 1956 SL 9-13	Sub Assigned 53-53	CEML Hrs. 60-70
Acc. Hrs. for Vac 14-14	Item 54-55	75% SL Hrs. 71-73
Employee Number 19-23	Shop 59	100% SL Hrs. 74-76
Date 24-27	Code 3 (incl) 60	50% SL Hrs. 77-80
Month SL App. 49-50	Vac. Hrs. 61-63	
Day 51	Overtime Hrs. 64-67	

H-2000 L-2000 W-1/20 W-1/20

By \_\_\_\_\_



County of Los Angeles

PERSONNEL DIVISION

Department of Charities

REQUEST TO DEPUTIZE EMPLOYEE

Harold J. Ostly, County Clerk  
Room 700 - Hall of Records  
Los Angeles, California

Los Angeles, California

Attention: Frances Peterson

Date

Dear Mr. Ostly:

Will you kindly deputize the bearer, Thomas W. Nelson to permit taking affidavits in connection with duties as an employee in this department.

TESTIMONY

ARTHUR J. WILL

Superintendent of Charities

By A. W. SILVER  
Personnel Manager - Charities

Thomas W. Nelson  
Signature for Identification

County of Los Angeles

## PERSONNEL DIVISION

Department of Charities

## EMPLOYEE INFORMATION SHEET

NAME THOMAS W. NELSON DATE 4-1-52

Residence Address 1686 BELVEDALE AVE, DUARTE Residence Phone ELIOTT 8-990

Height 5' 11" Weight 145 Color Eyes BROWN Color Hair BROWN Race WHITE

Date of Birth 2-24-12 Birth Place LITTLE ROCK, ARK.

Your Residence in California 2 Your Residence in L.A. County 3

Are you a citizen of the U.S. Yes If a Citizen by Naturalization your Certificate must be presented for verification.

Certificate No. \_\_\_\_\_ Date of Certificate \_\_\_\_\_ Where Issued \_\_\_\_\_

Name and Address of Relative or Friend to be notified in case of accident:  
Name GRACE W. NELSON Relationship WIFE  
Address 1686 BELVEDALE AVE, DUARTE Phone No. ELIOTT 8-990

If married woman, Husband's full name \_\_\_\_\_ If a Nurse, Cal. Reg. No. \_\_\_\_\_

Security No. \_\_\_\_\_

CHECK THAT WHICH APPLIES TO YOU

Married X  
Single \_\_\_\_\_  
Divorced \_\_\_\_\_  
Widowed \_\_\_\_\_  
Separated \_\_\_\_\_  
MALE X  
FEMALE \_\_\_\_\_

How you worked at this hospital before NO If so, when \_\_\_\_\_ Under what name \_\_\_\_\_

How you previously have been employed by the County of Los Angeles YES If so, when APRIL TO MAY, 1949 Department B & A

Organization (Membership) CALIFORNIA TEACHERS ASSN.  
Army - Navy - Marine Corps - Coast Guard \_\_\_\_\_ Post - War \_\_\_\_\_  
U. S. Veterans, Circle Branch of Armed Service \_\_\_\_\_ (Circle) \_\_\_\_\_ Name of War \_\_\_\_\_

EDUCATION: Circle last grade completed in Grammar or High School 1 2 3 4 5 6 7 8 9 10 11 12  
College or University attended WESTERN WASHINGTON UNIVERSITY, Bellingham, WA. Major: \_\_\_\_\_ Years completed 1 2 3 4 5 6 \_\_\_\_\_ Degree: B. A.

Other Schooling: Correspondence \_\_\_\_\_ Graduate School of Social Work \_\_\_\_\_  
Business or Trade Schools \_\_\_\_\_ UNIVERSITY OF WASHINGTON, SEATTLE, WASH.

## II. EMPLOYMENT HISTORY:

Begin with PRESENT or LAST experience.

Account for past TEN years.

From Mo. - Yr.	To Mo. - Yr.	Position or Occupation	Salary	Name and Address of Employer	Reason for leaving
4-1951	2-1952	PAROLE OFFICER	\$25.00	CALIFORNIA BUREAU OF PAROLE 115 S. BROADWAY, LOS ANGELES	DISMISSED
9-1950	10-1951	TEACHER	\$5.50	WANAHA-BURTON BOARDING AND MAN.	RESIGNED
3-1949	5-1949	WASH. STATE	\$11.40	LA COUNTY BUREAU OF PAROLE	RESIGNED
9-1947	2-1949	OFFICER	\$22.00	PARSONS, LOS ANGELES	RESIGNED
1-1945	6-1947	OFFICER	\$18.00	U.S. DEPT. OF ARMY	DISMISSED
7-1943	1-1945	TIME ASST.	\$8.00	WASHINGTON, D.C.	RESIGNED
				WASHINGTON STATE AND UNIVERSITY	
				U.S. DEPT. OF ARMY, OFFICE OF ARMS	
				PORTLAND, OR.	RESIGNED

\* Have you been discharged or compelled to quit a position before? YES  
If so, when \_\_\_\_\_

The above information is true by me to the best of my knowledge.

Signed Thomas W. Nelson  
Employee

Received by \_\_\_\_\_  
Employee, Personnel Section

Date \_\_\_\_\_

[90]

4-10-1915 7:15

RECEIVED  
COUNTY  
CLERK

APR 10 1915

U.S. DEPT. OF AG.  
FROM CALIFORNIA AG.  
PORTLAND, ORE.

RECEIVED  
SHERIFF'S OFFICE  
PORTLAND, ORE.  
TO THE SHERIFF

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION  
EMPLOYMENT SERVICE  
FBI

Senior Social Case Worker

TO: Mr. A. W. Silver  
1200 North State Street  
Los Angeles, California

Date April 21, 1952

CANDIDATE Thomas W. Nelson

PSA - 3/1952 - 4/1952

Our records indicate that you can give us information concerning the competence of this candidate for the above position.

By check marks in the appropriate places, please answer the following questions, using as the basis for your answers, observation, knowledge, available records or conference with persons who supervised the candidate.

Is the candidate's appearance acceptable for this type of work?

Yes No Neither

Do you know of any physical limitation which would affect the candidate's performance on this job?

Yes No If so, describe

How adaptable is the candidate when faced with new situations?

Adaptably Adaptably Highly

In a work situation, is the candidate's judgment

Sometimes questionable Always dependable Usually sound

Does the candidate "blow up" under stress?

Never Occasionally Never during period 3/52 to 4/52

Is the candidate's ability to assume responsibility and plan work

Satisfactory Satisfactory Very good

Does the candidate get along with supervisors

Excellent Fairly Adaptably

Are the candidate's relationships with fellow employees

Fair Occasionally strained Good

Is the candidate's skill in use of case work techniques

Adaptably Excellent Questionable

Is the candidate's interest in the advancement of professional standards

Uninformed on this point Blight Reasonable Keen

Is the ability of the candidate to comprehend problems

Superior Adaptably Keenly

RDE66A  
25-4-2

The following questions apply specifically to the position of Senior Social Case Worker (Child Welfare).

In case-work relations, does the candidate identify herself with clients

Too much	At the professional level	Too little
----------	---------------------------	------------

Remarks.

The very brief period of Mr. Nelson's employment was a learning period for him. His performance was above average for a new employee. At this it is believed that

Mr. Nelson had not had professional training.

In what respects is the applicant likely to prove

INDEFICIENT OR WEAK? No deficiencies or weaknesses of consequence were noted.

What are the applicant's STRENGTH points? Mr. Nelson had a very pleasing personality.

He was exceptionally well organized and his own standards for himself produced work

of excellent quality. He willingly carried his share of the work load and at no time showed any inclination to shirk responsibility.

Extent to which applicant is recommended for this position (when "Not Recommended" or "Strongly Recommended" weaknesses or strengths should be noted.)

Not Recommended

Recommended with Hesitancy

Recommended

Recommended with Confidence

Strongly Recommended

Comment

Signature J. W. Denver

Title District Director

4-30-52  
Date

County of Los Angeles

Department of Institutions

LOS ANGELES COUNTY GENERAL HOSPITAL

STATE OF CHANGE OF ADDRESS OR NAME  
(Make out in triplicate)

Personnel Division - Form 8020-A

DATE 6-29-52

My present address is 1821 ATLANTIC AVE, LONG BEACH 702-517  
Number Street City State

My former address was 1644 BOYCEDALE AVE. QUARTZ CANYON 9-9190  
Number Street City State

My name is THOMAS W. NELSON  
Please Print

My name was (if changed) \_\_\_\_\_  
Please Print

I work in the MEDICAL SOCIAL SERVICE DEPARTMENT

Have you taken a recent Civil Service Examination? NO  
Yes No

If so, for which position? \_\_\_\_\_

Does your name appear on any existing Civil Service List? NO  
Yes No

If so, which? \_\_\_\_\_

DO NOT WRITE BELOW THE DOUBLE LINE

THIS CHANGE OF ADDRESS, NAME AND FORMER EMPLOYMENT TO BEYOND ON LIST:

Forward to:	Noted	Date
POST OFFICE SECTION		
INFORMATION SECTION		
PERSONNEL DIVISION		
COUNTY CIVIL SERVICE COMMISSION		



[94]

County of Los Angeles

PERSONNEL DIVISION

Department of Charities

## WORK SHEET

Date 6-26-57

☐ New ☐ Return to Duty ☐ Continuation of Notice, Scaled \_\_\_\_\_  
☒ Change ☐ Triple Entry (Part-Temp) ☐ Correction of Notice, Scaled \_\_\_\_\_

Employee Name NELSON, Thomas W.		Emp. No. 10-23 66407	
Address 1106 Brandalee Ave, Santa		Phone 96-8940	
Effect. Date 24-29 6-17-57	Salary Chg. 7 to 30 Check: <input type="checkbox"/>	Paided Notice 6 to 30 Check: <input type="checkbox"/>	Borrowed Item 1 to 27 Check: <input type="checkbox"/>
Cont. Ser. Rate Chg. Only 1 to 20 Check: <input type="checkbox"/>	Plant Shop Adv. Rate 64-65 <input type="checkbox"/>	Class Lec. 68-69	Div. Code 31 21-0

Position Medical Social Worker		Relation Medical Social Worker	
Registered Sub. 44	Assigned Sub. 44	Registered Sub. 44	Assigned Sub. 44
Item 5173A	Step 1	Item 5173A	Step 1
Subst. 30	Subst. 30	Subst. 30	Subst. 30
Grd. Salary 216	Net Salary 216	Grd. Salary 216	Net Salary 216
Relat. Code —	Exp Code 52-4	Relat. Code —	Exp Code 52-4
Stages Code 3	Stages Code 3	Stages Code 73	Stages Code 2

Agency's Code 74 F	Previous County Service	No.	Continuous Service Date 75-69
Retirement %	Carroll No. 1502	Elig. No. 1	Reg. No.

☐ Approved for Reals ☐ S.M.C. & F.S. ☐ Paid. Regular - Unassigned Rate ☐ Check Loc. Chg.  
☐ From Change Only ☐ Temp - From Reals ☐ Return to Duty From \_\_\_\_\_

Remarks:

FOR PERSONNEL USE ONLY	
<input checked="" type="checkbox"/> From Reals	24-29
<input checked="" type="checkbox"/> Index Reals	1-1-57
<input type="checkbox"/> Loyalty Form	
<input type="checkbox"/> Vac. Form	
<input type="checkbox"/> Retire. Card	
<input type="checkbox"/> Regis. Card	
<input type="checkbox"/> 68 Day Rate	
<input type="checkbox"/> Leave of Abs.	
<input type="checkbox"/> Reinst. Letter	
<input type="checkbox"/> Tran. Letter	
<input type="checkbox"/> Council M/L	
<input type="checkbox"/> Voc. Training	
<input type="checkbox"/> O/T Letter	
<input type="checkbox"/> Release	
<input type="checkbox"/>	
<input type="checkbox"/> Return To	

Page No. 11

Personnel Manager - Charities

FOR PERSONNEL USE ONLY		
Any Emp. for 1955 EL 2-17	Sub Assigned 20-23	CHS Emp. 65-70
Any Emp. for Vac 14-16	Item 54-55	TRM EL Emp. 71-73
Employee Number 70-73	Step 30	CHS EL Emp. 74-76
Rate 30-37	Code 3 1st and 30	CHS EL Emp. 77-80
Month EL App. 65-69	Vac. Emp. 61-63	
Div. 31	Quar./m Emp. 64-67	

6-26-57 LAMM 1/75 10

By \_\_\_\_\_

[95]

June 25, 1952

PERSONNEL DIVISION  
COUNTY OF LOS ANGELES  
100 ANGELES COUNTY GENERAL HEADQUARTERS

**CHANGE NOTICE**

NAME **NELSON, Thomas W.**

EMPLOYEE NO.  
**66,07**

DEPT. NO. **21-0 (44)**

ADDRESS **1606 Brycedale Ave., Duarte EL 89190**

DIVISION **Med. Soc. Serv.**

ITEM & STEP

TITLE & STATUS

EMPLOYEE RATE NO.

FROM	<b>5173A-1</b>	<b>Med. Social Worker, Temp. (RENEW)</b>	<b>30</b>	<b>288.</b>	<b>288.</b>
TO	<b>5173A-1</b>	<b>Med. Social Worker, Temp.</b>	<b>30</b>	<b>288.</b>	<b>288.</b>

WITHHOLDING TAX CARD **52-4**

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

**Certif. #6802 Elig. #1**

AUTHORITY:

RETIREMENT PERCENTAGE

EFFECTIVE DATE: **July 17, 1952**

- CC-BPA-1-3
- FILE
- SERVICE REPORT
- BPA-2
- DIVISION HEAD
- EMPLOYEE

EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH.  
UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES ON A  
DAILY RATE OF PAY ARE PAID TWICE A MONTH.

LACOH 150 GEN 6-51

*Ans. P. 10*

[96]

70 C-203 10-60  
 COUNTY OF LOS ANGELES  
 DEPARTMENT OF CLERKIES

**PERSONNEL DIVISION**  
 ROOM 3000, 1ST FLOOR  
**CHANGE NOTICE**

2

NAME	EMPLOYEE NO.	POSITION	DATE	RATE	CLASS	GRADE	STEP	SALARY
THOMAS V NELSON	60807	DEPT. SEC. SERV.						210 40
ALTRAL AND SOC WORKER	7	10						200.00
SUMAL AND SOC WORKER	7	10						200.00

LESS DEDUCTIONS FOR (STANDARD) TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

EMPLOYEE NO.	STANDARD TAX RATE	RETIREMENT CONTRIBUTION	OTHER DEDUCTIONS
60807	7.47	7.01	

6-10-53

REMARKS

STATUS CODE

1. PROMOTION

2. TRANSFER

3. NEW EMPLOYEE

*One Below*

EMPLOYER ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH. UNLESS OTHERWISE ORDERED FOR THREE A MONTH. PAY. EMPLOYER ON A DAILY RATE OF PAY ARE PAID THREE A MONTH.

PLEASE FILE ON PERSONNEL RECORD.

TELETYPE 4-11

LOS ANGELES COUNTY

*Myrtle E. Silver*

LETTERGRAM

To Mrs. Myrtle Silver,  
Director, B.M.S.S.

From Long Beach Medical Aid

Date 9-22-52

Re.

Subject

Please be informed that I received certificate No. 4697 dated August 5, 1952, stating that I have qualified as a registered social worker.

*Thomas W. Nelson*  
Thomas W. Nelson,  
Medical Social Worker.

N-h

*Good*

*105*

Name of Candidate		Date of Test		Score	
1. General Information					
2. Knowledge of the Job					
3. Ability to Perform the Job					
4. Personality					
5. Physical Condition					
6. Social Skills					
7. Communication Skills					
8. Problem Solving					
9. Teamwork					
10. Customer Service					
11. Leadership					
12. Initiative					
13. Adaptability					
14. Stress Management					
15. Time Management					
16. Organization					
17. Attention to Detail					
18. Creativity					
19. Persistence					
20. Flexibility					
21. Responsibility					
22. Honesty					
23. Integrity					
24. Reliability					
25. Consistency					
26. Accuracy					
27. Thoroughness					
28. Diligence					
29. Carefulness					
30. Precision					
31. Meticulousness					
32. Detail-oriented					
33. Organized					
34. Systematic					
35. Methodical					
36. Structured					
37. Planned					
38. Prepared					
39. Anticipatory					
40. Proactive					
41. Initiative					
42. Self-motivated					
43. Independent					
44. Self-reliant					
45. Autonomous					
46. Self-sufficient					
47. Self-starting					
48. Self-driven					
49. Self-motivated					
50. Self-reliant					
51. Autonomous					
52. Self-sufficient					
53. Self-starting					
54. Self-driven					
55. Self-motivated					
56. Self-reliant					
57. Autonomous					
58. Self-sufficient					
59. Self-starting					
60. Self-driven					
61. Self-motivated					
62. Self-reliant					
63. Autonomous					
64. Self-sufficient					
65. Self-starting					
66. Self-driven					
67. Self-motivated					
68. Self-reliant					
69. Autonomous					
70. Self-sufficient					
71. Self-starting					
72. Self-driven					
73. Self-motivated					
74. Self-reliant					
75. Autonomous					
76. Self-sufficient					
77. Self-starting					
78. Self-driven					
79. Self-motivated					
80. Self-reliant					
81. Autonomous					
82. Self-sufficient					
83. Self-starting					
84. Self-driven					
85. Self-motivated					
86. Self-reliant					
87. Autonomous					
88. Self-sufficient					
89. Self-starting					
90. Self-driven					
91. Self-motivated					
92. Self-reliant					
93. Autonomous					
94. Self-sufficient					
95. Self-starting					
96. Self-driven					
97. Self-motivated					
98. Self-reliant					
99. Autonomous					
100. Self-sufficient					



[illegible]





LOS ANGELES COUNTY CIVIL SERVICE COMMISSION  
REFERENCE REPORT  
FOR

7153

MEDICAL SOCIAL WORKER

TO: Mr. A. W. Silver

Date April 7, 1953CANDIDATE Thomas Walfrid NelsonBUSS - Long Beach 4/1/52 to date

Our records indicate that you can give us information concerning the competence of this candidate for the above position.

By check marks in the appropriate places, please answer the following questions, using as the basis for your answers, observation, knowledge, available records or conference with persons who supervised the candidate.

Is the candidate's appearance acceptable for this type of work? Yes No RemarksDo you know of any physical limitation which would affect the candidate's performance on this job? Yes No If so, describe,How adaptable is the candidate when faced with new situations? Extremely Moderately SlightlyIn a work situation, is the candidate's judgment Sometime Always Usually  
questionable dependable soundDoes the candidate "blow up" under stress? Invariably Sometime NeverIs the candidate's ability to assume responsibility and plan work Satisfactory Unsatisfactory Very goodDoes the candidate get along with supervisors Excellent Fairly AdequatelyAre the candidate's relationships with fellow employees Poor Occasionally Good  
strainedIs the candidate's skill in use of case work technique Adequate Excellent QuestionableIs the candidate's interest in the advancement of professional standards Slight Reasonable KeenIs the ability of the candidate to comprehend problems Superior Inadequate Acceptable

gmofaa

25-4-2

[102]

The following statement was furnished by the candidate for the position of \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

In any case, statement of the candidate  
 does not indicate identity of the  
 with persons \_\_\_\_\_

Signature \_\_\_\_\_

Have you observed the candidate's  
 relationship with the \_\_\_\_\_?

If so, give an account of such relationship  
 the candidate's nature or character \_\_\_\_\_

staff have been very good. The National Director of the \_\_\_\_\_  
 committed on his behalf and cooperative in the \_\_\_\_\_

In the candidate \_\_\_\_\_

Extent to which applicant is recommended for this position shall be indicated  
 or "Strongly Recommended" conditions or strengths shall be noted.

Not Recommended	Recommended	Strongly Recommended
_____	_____	_____
_____	_____	_____

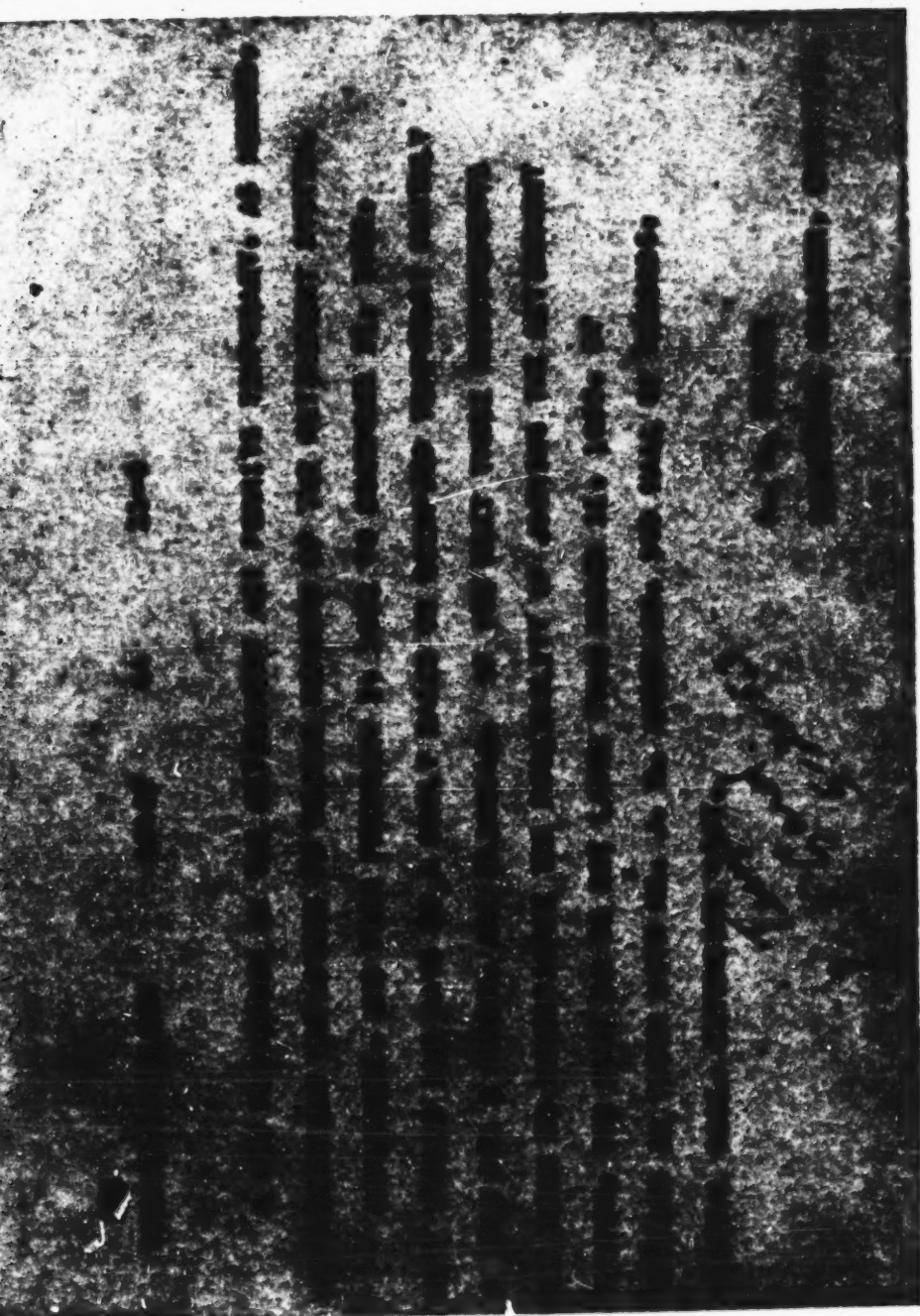
Comments: \_\_\_\_\_

Date April 14, 1933

Signature \_\_\_\_\_  
 Title \_\_\_\_\_  
 \_\_\_\_\_

EO 9602  
 (2-27-11)

03]



**LOS ANGELES COUNTY CIVIL SERVICE COMMISSION****COUNTY CIVIL SERVICE BUILDING****881 NORTH MAIN STREET****LOS ANGELES 12, CALIFORNIA****NOTICE OF RESULT OF MEDICAL EXAMINATION**

**Thomas V. Nelson**  
**1321 Atlantic Avenue**  
**Long Beach 13, California**

**DATE:****JUN 16 1953****POSITION: Med. Sec. Worker**

Following medical examination, you have been accepted as meeting the physical standards for appointment to the above position.

A copy of the Examining Physician's report has been sent to the department which is employing you and may be inspected by you at the Personnel Office there, or if more convenient, at our office.

**cc: Med. Sec. Services****Medical Record Clerk**

*Lillian Enrick*

Department of Charities

22

☐ None      ☐ Returns to Duty      ☐ Cancellation of Notice, Dated \_\_\_\_\_

☒ Change      ☐ Trip(s) History (Purse-Trip)      ☐ Correction of Notice, Dated \_\_\_\_\_

Position <i>Asst. Sec. Warden</i>			
Standard Rate 47-55		Assigned Rate 44-53	
Step 54-59	<i>5154A</i>	Step 59	<i>2</i>
Retard 60-65		<i>31</i>	
Std. Salary 60-69		Net Salary 60-69	
<i>319</i>		<i>219</i>	
Union Code 69		Tax Code 70-71	Vacation Code 73
<i>—</i>		<i>53-4</i>	<i>1</i>

☐ Approved for Release      ☐ U.S.C. & F.B.      ☐ Paid: Regular - Unassembled State      ☐ Clerk Loc. Chg.

☐ State Change Only      ☐ Temp. - Perm. Release      ☐ Return to Duty From \_\_\_\_\_      ☐ \_\_\_\_\_

☐ Temp. Ass. of CIC

**Keywords:**

**FOR PERSONNEL USE ONLY**

☒ Name Noted **SEP 14**

☐ Index Noted

☐ Loyalty Form

☐ Vacat. Form

☐ Retire. Card

☐ Hqs. Card

☐ 40 Day Enlist

☐ Leave of Abs.

☐ Next of Kin

☐ Train. Letter

☐ Control W/L

☐ Vet. Income

☐ G/T Letter

☐ Release

☐ Return To

*John J. [illegible]*  
Personnel Manager - Christian

Page 84

5

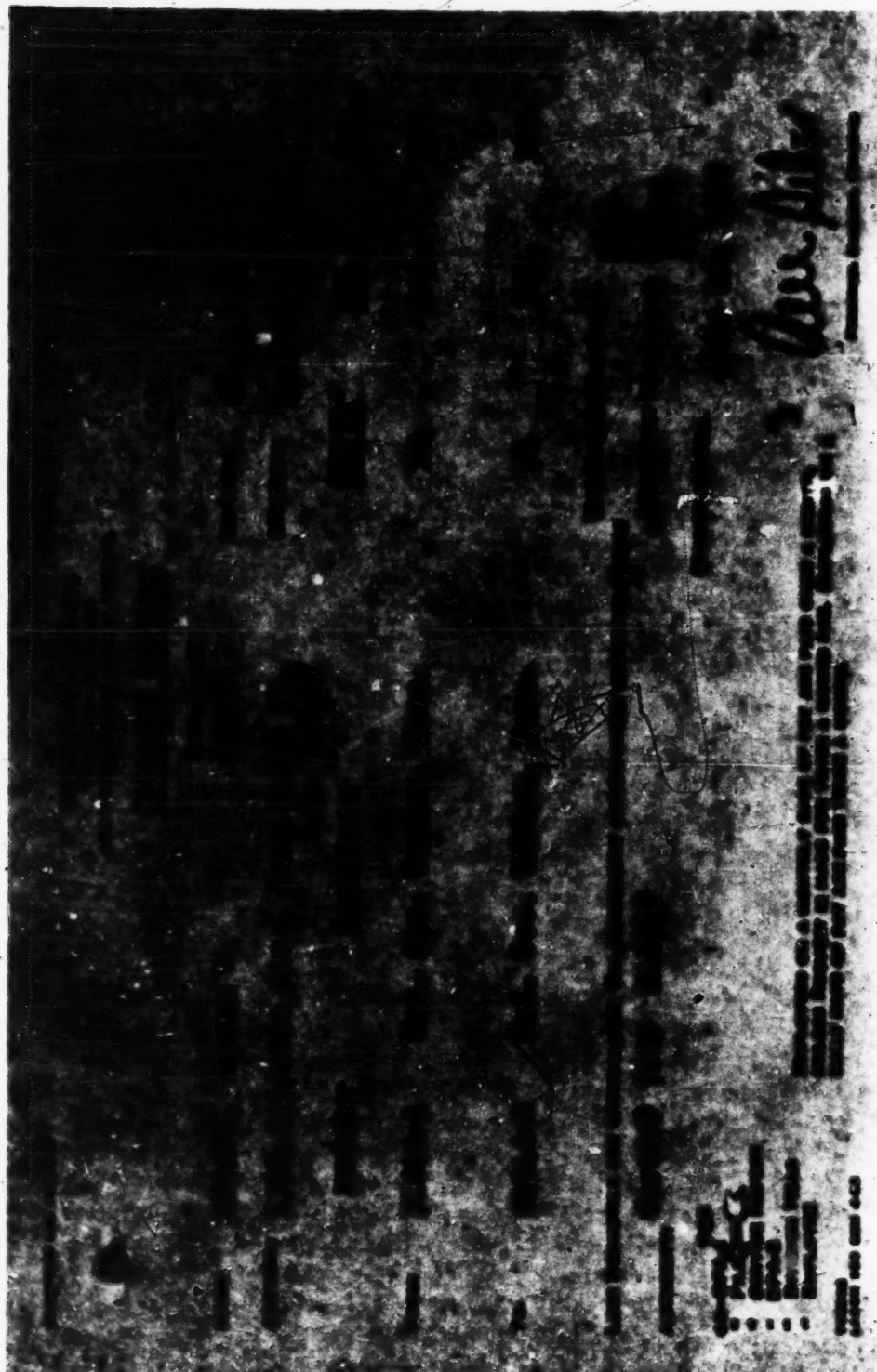
FOR PERSONAL USE ONLY		
Acc Hrs. for 1968 Hl. 9-13	Sub Assigned 53-53	CEM. Hrs. 68-70
Acc Hrs. for Vac 14-16	Item 54-58	1968 Hl. Hrs. 71-73
Employee Number 19-23	Step 59	1968 Hl. Hrs. 74-76
Date 24-27	Code 1 up col. 60	50% Hl. Hrs. 77-80
Month Hl. App 81-83	Vac. Hrs. 61-63	
Dys 51	Overtime Hrs. 64-67	

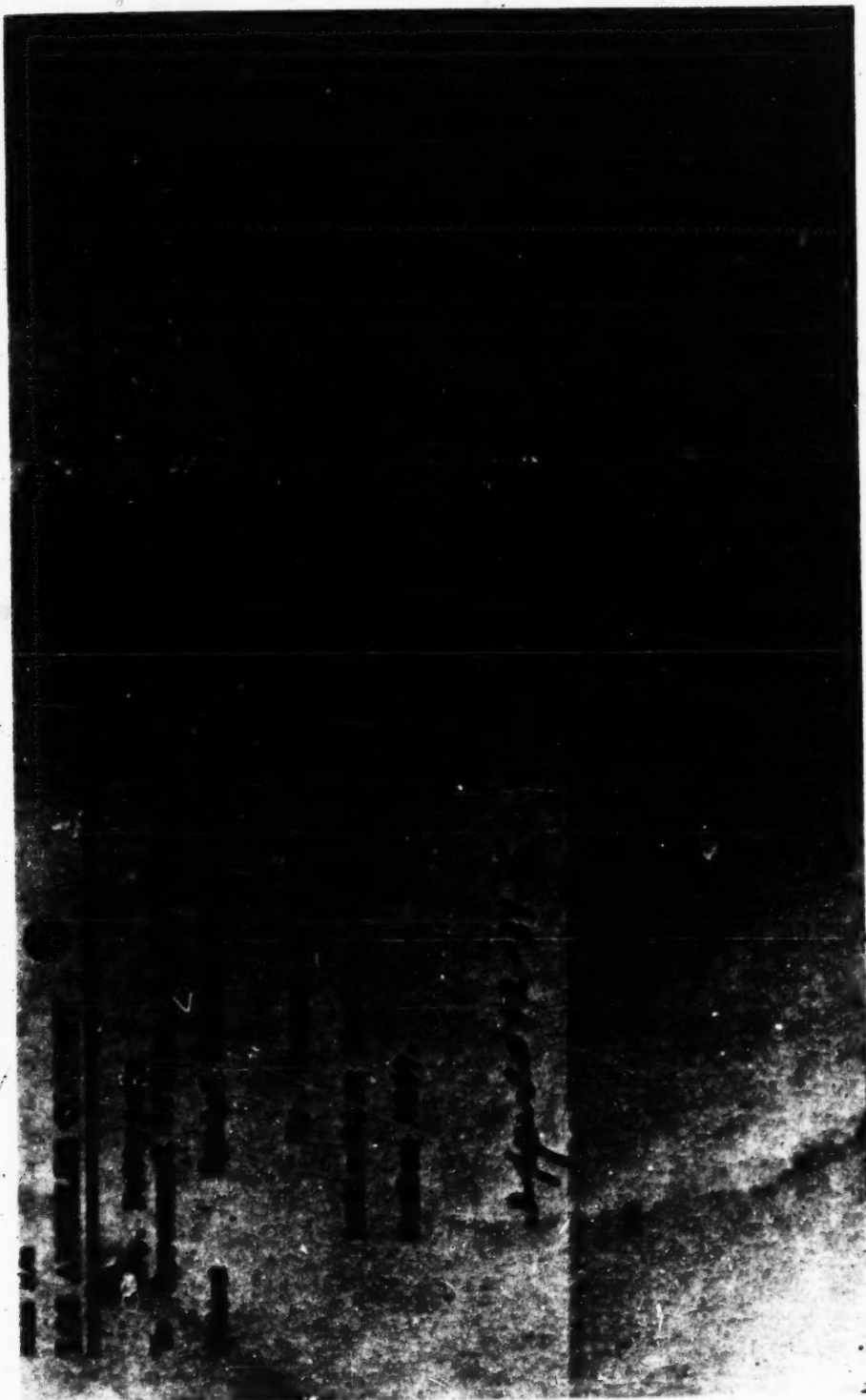
[illegible]

22



[105a]





78 C-368 11-82

COUNTY OF LOS ANGELES  
DEPARTMENT OF CHARITIES

PERSONNEL DIVISION  
ROOM 5000A ACUTE UNIT  
LOS ANGELES COUNTY GENERAL HOSPITAL  
**CHANGE NOTICE**

2

NAME: NELSON THOMAS W EMPLOYEE NO. 66407 DIVISION: CHAR MED SOC SER DEPT. NO. 21-0 BUS 04

ITEM & STEP  
FROM:

5184A2

MED SOC WORKER

TO:

5184A2

MED SOC WORKER

TITLE

SCHEDULE  
RATE NO.

P 31

P 32

GRD.  
SALARY

310.00

337.00

NET  
SALARY

310.00

337.00

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

PAGE NO. 6222 GRADUANCE NO. 04 WITHHOLDING RETIREMENT PERCENTAGE 7.78 EFFECTIVE DATE 7 01 93

REMARKS

STATUS CODE

P. PERMANENT

T. TEMPORARY

S. TEMP. (EMERGENCY)

EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH.  
UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES  
ON A DAILY RATE OF PAY ARE PAID TWICE A MONTH.

*Wm. D. Dyer*  
PERSONNEL MANAGER, CHARITIES



[109]

*Please file on Personnel Record  
of Mr. Nelson*



KARL HOLTCH  
PROBATION OFFICER  
JOHN H. BROWN  
ASSISTANT PROBATION OFFICER

**County of Los Angeles**  
**Probation Officer**  
LOS ANGELES COUNTY  
**Los Angeles 12, California**

AREA OFFICES  
1000 S. GATEWAY BLVD.  
LOS ANGELES 12, CALIF.  
---  
2000 S. GATEWAY BLVD.  
PASADENA 1, CALIF.  
---  
1000 FINEST STREET  
SANTA MONICA, CALIF.  
---  
7000 S. GATEWAY BLVD.  
HUNTINGTON PARK, CALIF.  
---  
5000 LAKESHORE BLVD.  
REDDING, CALIF.  
---  
2000 S. GATEWAY BLVD.  
LOS ANGELES 12, CALIF.

REFERS TO: **Thomas W. Nelson**

January 28 1954

Vera Postel, Director  
Los Angeles County Department of Charities  
Medical Aid District Office  
1931 American Avenue  
Long Beach, California

*Re: Nelson, Thomas  
and Joe W. W.*

Dear Miss Postel

We are writing to you regarding Thomas W. Nelson, who is now employed by your agency as a Medical Social Worker, and who is applying for the position of Deputy Probation Officer in the Los Angeles County Probation Department.

The job of Deputy Probation Officer, involves working as a Probation Case Worker with individuals who have violated the law in some respect and have been placed on probation by a court. In the Juvenile Division, a Deputy Probation Officer works also with boys who have been neglected and need care. The job requires a person with warmth and understanding, social and emotional maturity. The person must be able to organize and manage a relatively large caseload, must be capable of handling job pressures, and in addition must be able to operate successfully as a helping person within an authoritative setting.

We would like to confirm Mr. Nelson's employment by your agency, and get some understanding of his performance. Additional information which would help us to evaluate Mr. Nelson's qualifications and abilities, in relation to the job of Deputy Probation Officer, will be appreciated.

Thank you very much for your cooperation and assistance in this matter.

Yours sincerely

KARL HOLTCH  
PROBATION OFFICER  
*Bernard Egon*  
Bernard Egon  
Training Supervisor

*g/p/y advised that by phone  
Reported on Nelson as a good  
average worker, dependable  
mature pleasant and composed  
- Nelson*

dw

[110]

*1/15/54 File on Personnel Room  
Myrtle Silver in Room*

1321 Atlantic Avenue  
Long Beach 13, California  
February 5, 1954

Los Angeles County Civil Service Commission  
501 North Main Street  
Los Angeles, California

Gentlemen:

I am now listed as number nine on the civil service list for Deputy Probation Officer. Since it is my present intention to remain in the employ of the Bureau of Medical Social Service, I am requesting that my name be placed on the inactive list for Deputy Probation Officer.

Your cooperation in this matter is appreciated.

Very truly yours,

*Thomas W. Nelson*

Thomas W. Nelson

cc: Mr. Norman Rosen  
Training Supervisor  
Probation Department

✓ Mrs. Myrtle Silver  
Director, Bureau of Medical Social Service



100-107-904

COUNTY OF LOS ANGELES  
DEPARTMENT OF CHARITIES

PERSONNEL DIVISION  
ROOM 202CA ACUTE UNIT  
LOS ANGELES COUNTY GENERAL HOSPITAL

CHANGE NOTICE

FILE

2

DEPT. NO.

DIVISION

EMPLOYEE NO.

NAME

ITEM & STEP

FROM

21-0 44

Medical Social Service

66407

NELSON, Thomas W.

SCHEDULE RATE NO.

ORD. SALARY

NET SALARY

TITLE

337.

337.

P 32

Medical Social Worker

5184A-2

355.

355.

P 32

Medical Social Worker

5184A-3

LESS DEDUCTION FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

PAGE NO.

ORDINANCE NO.

WITHHOLDING TAX CODE

RETIREMENT PERCENTAGE

EFFECTIVE DATE

STATUS CODE

7-1-54

7.78

54-4

REMARKS

Step advance subject to approval with OSC.

P. PERMANENT

T. TEMPORARY

E. TEMP. (EMERGENT)

EMPLOYEES ON A MONTHLY RATE OF PAY ARE PAID ONCE A MONTH. UNLESS REQUEST IS MADE FOR TWICE A MONTH PAY. EMPLOYEES ON A DAILY RATE OF PAY ARE PAID TWICE A MONTH.

*Wm. A. Wilson*  
PERSONNEL MANAGER, CHARITIES

**DECLARATION** 9/75 FOR OFFICE USE

1. Medical Social Work Director  
 2. EXACT Examination Title

3. Open ☒ Professional ☐ 4. Charleston  
 Department or District

5. SEP 20 1954

6. Mr. ☐ Mrs. ☐ Miss ☐ Thomas Welford Nelson  
 First Middle Last

7. ADDRESS: 1121 Atlantic Ave. Long Beach 13 Calif. Long Beach  
 Number Street City Zone State

8. TELEPHONE: 702597 W 4314 745  
 Business Home Business Home Exchange

9. 5' 11" 150 150 Little Rock Washington  
 Height Weight Birthplace Residence

10. Date of Birth: February 21, 1911 11. Age Last Birthday: 64

ANSWER QUESTIONS BY PLACING AN "X" IN THE CORRECT BOX

12. Do you live in Los Angeles County or in any city in Los Angeles County? ☒ Yes ☐ No

13. Are you a citizen of the United States of America? ☒ Yes ☐ No

14. Do you claim Veteran's Credit under the Los Angeles County Charter (See paragraph 6 below)? ☒ Yes ☐ No

If so, do you claim such Credit on the basis of your own military service? ☒ Yes ☐ No

To conform with Section 305 of the Los Angeles County Charter, a Veteran's Credit of 10 percentage points may be added to any open competitive examination for the position of any honorably discharged veteran who has served in the armed forces in time of war or in the peacetime grade of the veteran or wife of any such veteran who while engaged in such service was killed or was disabled and thereby permanently prevented from engaging in any remunerative occupation. If you claim Veteran's Credit, give the following information:

Service Number:        Branch:        Dates of Active Service: From        To       

You must present discharge or certificate of service either to the Civil Service Department or to the appointing department before employment.

15. Are you now knowingly a member of the Communist Party? ☐ Yes ☒ No

16. If a license or certificate is a requirement on the examination announcement, state the following:

Title	No.	Date Issued	Date Expires
<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>

17. Have you ever been convicted, fined, imprisoned, or placed on probation or a suspended sentence, or have you forfeited bail in connection with any offense (except for traffic offense involving faulty equipment, parking, lane or traffic signal, or speeding) in any civil or military court of law? ☐ Yes ☒ No

If "Yes," give the following information for each offense:

Offense	Date	Sentence and/or Fine
<u>      </u>	<u>      </u>	<u>      </u>
<u>      </u>	<u>      </u>	<u>      </u>

18. Do you have any physical defects? ☐ Yes ☒ No, what are they?       

19. PRINT FULL NAME ON LINE AT FAR SIDE OF PAGE

**CERTIFICATE OF APPLICANT**  
 (Read this statement carefully before signing)

I hereby certify that all statements made on or in connection with this application, including those regarding my training and experience (on the other side of this form), are true and complete to the best of my knowledge and belief and I understand and agree that any misstatements or omissions of material fact herein may cause forfeiture on my part of all rights to employment by Los Angeles County or by any district served by the Los Angeles County Civil Service Commission.

20. Thomas Welford Nelson  
 Signature of Applicant Date 9/75

21. List any name(s) you have ever used other than the one signed above (maiden name, previous married name(s), etc.):       

FILL IN OTHER SIDE OF THIS FORM

75250 504 5/54

22. PRINT NAME Thomas Paul W.  
 23. Check last grade completed: 0 1 2 3 4 5 6 7 8 9 10 11 12 12  
 24. Did you graduate from high school? ☒ Yes ☐ No  
 25. Date you left high school: 1930  
 26. Type of degree: Commercial

27. SCHOOLS ATTENDED AFTER HIGH SCHOOL OR SPECIAL TRAINING RECEIVED		Type of Training or Major	Dates Attended	Number of Years	Grade	Remarks
NAME OF SCHOOL or Place Where Special Training Received	ADDRESS		From	To		
Logan High School	Seattle, Wash.	Education	1928	1930	12	
Graduate School of Social Work, University of Washington	Seattle, Wash.	Soc. Work	1930	1931	1	

28. EMPLOYMENT: Give last year NUMBER JOB. Then list your other jobs beginning with the FIRST EMPLOYER. Amount for ALL TIME in the last 12 years including time in military service and time when you were not employed. In addition, list any other EMPLOYERS mentioned in the details of the position for which you are applying.

DATE	FROM	TO	NAME OF EMPLOYER	ADDRESS	POSITION	REMARKS
1930	1	10	Medical Social Worker	at Long Beach General Hospital	Medical social service with patients	
1930	11	12	Teacher	at Long Beach General Hospital	Substitute teacher in Junior	
1931	1	12	Supervisor	at Long Beach General Hospital	Supervised male adults on parole.	
1931	1	12	Teacher	at Long Beach General Hospital	Taught adult and high school students who were patients in tuberculosis sanatorium.	
1931	1	12	Social Case Worker	at Long Beach General Hospital	Intake interviewer of applicants for public assistance.	
1931	1	12	Welfare Officer	at Long Beach General Hospital	Supervised and supervised welfare activities in hospital.	
1931	1	12	Principal Welfare Officer	at Long Beach General Hospital	Supervised and supervised welfare activities in hospital.	
1931	1	12	Senior Administration Assistant	at Long Beach General Hospital	Coordinated arrangements for transportation, etc.	
1931	1	12	Imported Mexican farm	at Long Beach General Hospital		

29. Have you ever been discharged by an employer or have you ever been cited as unfit?  
 State Dept. of Corrections  
 Inaccurate information reported on application form.  
 Alleged violation of Pacific War Rel. Act.

30. Is there any reason why we should not check your employment record with your present employer?

DATE	FROM	TO	NAME OF EMPLOYER	ADDRESS	POSITION	REMARKS
1931	1	12	Welfare Officer	at Long Beach General Hospital	Supervised and supervised welfare activities in hospital.	
1931	1	12	Principal Welfare Officer	at Long Beach General Hospital	Supervised and supervised welfare activities in hospital.	
1931	1	12	Senior Administration Assistant	at Long Beach General Hospital	Coordinated arrangements for transportation, etc.	
1931	1	12	Imported Mexican farm	at Long Beach General Hospital		

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION  
 1000 WEST 10TH STREET  
 LOS ANGELES, CALIF. 90015  
 AND ADDRESS TO: COMMISSIONER

September 8, 1974

Mr. Thomas W. Nelson  
 1325 Alhambra Avenue  
 Long Beach 13, California

Dear Applicant:

We regret that we are unable to accept your application in the examination for Assistant Fire Station Engineer as it appears from a review of your qualifications that you do not meet the requirements checked below:

<input type="checkbox"/> Education or training	<input type="checkbox"/> Application received after close of filing period
<input type="checkbox"/> Experience	<input type="checkbox"/> Height and/or weight
<input type="checkbox"/> Age	<input type="checkbox"/> Residence
<input type="checkbox"/> License	<input type="checkbox"/> Eligibility for competing in a promotional examination
<input type="checkbox"/> Citizenship	
<input type="checkbox"/> Electorship	

If you believe that there has been an error in our review of your application, we shall consider any additional information that you may wish to submit.

Although it appears that you do not meet all the requirements for this examination, you may meet the requirements for others. You are urged, therefore, to apply for any future examinations announced by this Commission for which you feel you meet the requirements.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION  
 Recruitment and Placement Section

PLEASE SEE REVERSE SIDE

Encs

SD 201 Rev.

8/72

6/23/74

MEMBER OF THE CIVIL SERVICE COMMISSION OF THE UNITED STATES AND TERRITORIES

September 12, 1954

Gentlemen:

I believe an error has been made in reviewing my qualifications. Your bulletin announcement gives as an alternative to the first qualification the following: "Completion of one-year graduate curriculum in an accredited school of social work including supervised field work in a case-work agency, and three years experience as described above. Note: two or more years of supervised social case-work experience in family or child welfare in a recognized case-work agency may be substituted for one year of the required experience."

As my application shows I completed one year of study at the Graduate School of Social Work, University of Washington. This study included supervised field work done with King County Welfare Department. It is my understanding the University of Washington school is an accredited school of social work.

My application further shows I have completed two years and five months employment with Los Angeles County as a Medical Social Worker. My employment as a case worker for three years with Thurston County Welfare Department, Olympia, Washington more than fulfills the requirement for additional case-work experience.

On the basis of the above clarification will you kindly give my application further consideration.

Very truly yours,

Thomas W. Nelson

## REPORT OF PERFORMANCE EVALUATION

[illegible]



NELSON, THOMAS W.  
County of Los Angeles

66407

O 44

Personnel Division Department of Charities

CERTIFICATION OF DELIVERY  
REPORT OF PERFORMANCE EVALUATION

I hereby certify that a copy of Report of  
Performance Evaluation for the period ended  
November 30, 1954 was given by me on this date  
to the above named employee.

DO NOT BEND, FOLD,  
CREASE OR OTHERWISE  
MUTILATE THIS CARD

(Signed) Thomas W. Nelson  
(Title) Director of Personnel

Date 7-12-55  
Note: This card must be returned to the Personnel  
Division as soon as it is signed

# NEW YORK STATE DEPARTMENT OF TAXATION

## CHANGE NOTICE

DATE OF CHANGE: 07/01/55

NEW YORK THOMAS W.

66407

CHAR MED SOC SER

21-0 44

ORG. SALARY

5184A3 MED SOC WORKER

P

32

355.00

355.00

5184A4 MED SOC WORKER

P

34

417.00

417.00

LESS DEDUCTIONS FOR WITHHOLDING TAX, RETIREMENT AND/OR OTHER DEDUCTIBLE ITEMS

6699 6 7.78 07 01 55

STATUS CODE

P PERMANENT

T TEMPORARY

E TEMP (EMERGENCY)

STEP ADV SUBJ TO APP OF CSC

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION

# REPORT OF PERFORMANCE EVALUATION

NAME: NELSON THOMAS W.	EDUC: 60407	CHAR: MED	DOC: SER
TITLE: MED SOC WORKER			

CHECK ITEMS	CIRCLE FACTOR RATINGS	COMMENTS
<input type="checkbox"/> Strong	B	<p>BELOW</p> <p>MET</p> <p>EXCEEDED</p>
<input type="checkbox"/> Satisfactory	M	
<input type="checkbox"/> Weak	E	

1. QUANTITY → B M E

☒ Amount of work performed

☒ Consistency of work on schedule

2. QUALITY → B M E

☒ Accuracy

☒ Neatness of work product

☒ Thoroughness

☒ Oral expression

☒ Written expression

3. WORK HABITS → B M E

☒ Observance of working hours

☒ Attendance

☒ Observance of rules and regulations

☒ Closest to 100% effort

☒ Cooperation with work group

☒ Orderliness in work

☒ Application of force

4. PERSONAL RELATIONS → B M E

☒ Getting along with fellow employees

☒ Meeting and handling the public

☒ Personal appearance

5. ADAPTABILITY → B M E

☒ Performance in new situations

☒ Performance in emergencies

☒ Performance with unusual assignments

6. SUPERVISORY ABILITY → B M E

☐ Planning and assigning

☐ Training and instructing

☐ Discipline control

☐ Evaluating performance

☐ Leadership

☐ Making decisions

☐ Encouraging subordinates

☐ Approachability

OVERALL RATING →

SIGNATURES OF REPORTING OFFICERS

DATE: Edythe Carter 2-4-66

REVIEWED:

DEPT HEAD: [Signature]

OR ASST: [Signature]

Supervisor	Supervisor	Supervisor	Supervisor

County of Los Angeles

|| || || ||

|| || || ||

DO NOT BEND, FOLD,

CREASE OR OTHERWISE

MUTILATE THIS CARD

|| || || ||

|| || || ||

||

H-38 3/55

65407

C 43

Personnel Division

Department of Charities

CERTIFICATION OF DELIVERED  
REPORT OF PERFORMANCE EVALUATION

I hereby certify that a copy of Report of  
Performance Evaluation for the period ended  
November 30, 1955 was given by me on this date  
to the above named employee.

(Signed) Elmer F. [illegible]

(Title) Chief, [illegible]

Date 12/1/55  
Note: This card must be returned to the Personnel  
Division as soon as it is signed.

LOS ANGELES COUNTY

Superintendent

MEMORANDUM

To:

From:

Date:

4/1/52

Subject:

MEMORANDUM FOR FILE OF THOMAS W. NELSON

No.

Received from Charities Personnel Office the following:

- (1) Face Sheet dated March 2, 1949 signed by Thomas W. Nelson
- (2) Employee Information Sheet dated April 1, 1952 signed by Thomas W. Nelson
- (3) Report of Interview with Thomas W. Nelson dated April 1, 1952 signed by

Dorothy E. White

W. D. Shingleton #514

Encl. 3-41 Tel. Room

# RECORD OF SERVICE

Board Order of 2-19-53 (Minute Book No. 170, Page 29)  
 The attached order of the Board of Supervisors of the County of Santa Clara, California, is hereby  
 the House Un-American Activities Committee, for the purpose of the investigation of the activities of

as personally served on Thomas H. Nelson

Long Beach Hospital, 2597 Redondo Blvd., Long Beach

at address, office, residence, or other place at which notice was served

by the undersigned at 1:15 P.M. April 4, 1956

Time Date

Name of person serving notice  
 Personnel Manager, Charities

Signature and name of person to be served

April 4<sup>th</sup> day of April 1956

County Clerk

Blair A. Alexander  
 Deputy County Clerk



## PERSONNEL DIVISION

ROOM 2020-A

Los Angeles County General Hospital

## SEPARATION FROM SERVICE NOTICE

Date 5-2-56

NAME

Nelson, Thomas N.

EMPLOYEE #

66407

DEPARTMENT

CHARITIES-MED. SOC. SERV.DISCHARGED

LAST DAY WORKED

5-2-56 (4 hrs)

REGULAR VACATION

5-2 (4 hrs) to 5-15 (9 hrs)4 days

LEAVING VACATION

5-16 to 5-21-56

DAYS OFF

—

HOLIDAYS

—

OVERTIME

—

COST

—o/s 5-2-56 (4 hrs)awsp 5-15 (1 hr)

THE SERVICE COMMISSION  
REQUEST FOR LEAVE OF ABSENCE  
AND VACATION

Form 378 23 3/34

Submit in Duplicate to Civil Service Commission

To the Los Angeles County Civil Service Commission:

**Medical Social Worker**

I hereby request approval of absence from regular duty in the position of

vacation with pay Regular

**4 wk.**

days leaving

leave without pay from

**Leaving vacation**

My reason for this request is

**Discharged.**

*Thomas W. Nelson* **5-3-56**  
(Employee) Date

(Signed)

**Thomas W. Nelson**

**Charles-Med. Soc. Serv.**

Approved: **COUNTY CIVIL SERVICE COMMISSION**  
Department

By *[Signature]* For *[Signature]*  
Department Head or Authorized Representative

THIS SPACE FOR USE OF COMMISSION ONLY

Entered service

Extension of leave effective

Remarks

OFFICE OF LOS ANGELES

DEPARTMENT OF EMPLOYMENT

PERSONNEL DIVISION  
ROOM 80504 ACUTE UNIT  
LOS ANGELES COUNTY GENERAL HOSPITAL

# TERMINATION OF EMPLOYMENT

NAME **KELCH, Thomas L.** EMPLOYER NO. **60407** MAY 2, 1956  
ADDRESS **1321 Atlantic Ave. Long Beach 13, Calif.** DIVISION **Med. Soc. Serv.** DEPT NO. **21-0 (24)**

ITEM & STEP	TITLE & STATUS	SCHEDULE RATE NO.	ORD. SALARY	NET SALARY
-------------	----------------	-------------------	-------------	------------

5184-4	Med. Soc. Worker, Pym.	34	417.	417.
--------	------------------------	----	------	------

REASON **Discharged.**

WITHHOLDING TAX CODE **56-4**

RETIREMENT PERCENTAGE **7.78**

EFFECTIVE DATE: **May 2, 1956 (12:00 noon)**  
Last day worked **5-2-56 (4 hrs.)**  
Reg. Vac. **5-2 (4 hrs.)** to **5-15 (7 hrs.)**  
Lvg. Vac. **5-16 to 5-21** **AWOL 5-15 (1 hr)**

CC. PAYROLL  
SERVICE REPORT  
FILE  
DIVISION HEAD  
EMPLOYER  
KEY CUSTODIAN  
BNA  
ALL CLAIMS

6-5-46  
6/15/56  
7-21/55

*W. J. [Signature]*

TERMINAL NUMBER CHASING



# County of Los Angeles

## Board of Supervisors

501 Hall of Records

Los Angeles 12

(Mutual 6211)

### MEMBERS OF THE BOARD

HENRY C. LEE

Chairman

KENNETH JAMES

JOHN ANDERSON

CLINTON W. DANCE

ROGER W. JENKINS

RAY E. LEE

DEPUTY CLERK OF THE BOARD

TUESDAY, FEBRUARY 19, 1952.

The Board met in regular session. Present: Supervisors Roger W. Jessup, Chairman presiding, Herbert G. Lee, Leonard J. Beach, Raymond V. Barry, and Harold J. Gilly, Clerk, by Ray E. Lee, Deputy Clerk. Absent: Supervisor John Anderson Ford.

\*\*\*\*\*

(Minute Book No. 379, Page 137)

SO  
IN RE POSSIBLE APPEARANCE OF CERTAIN COUNTY EMPLOYEES BEFORE THE UNITED STATES CONGRESSIONAL HOUSE UN-AMERICAN ACTIVITIES COMMITTEE; ORDER DECLARING AND SETTING FORTH DUTIES AS RECOMMENDED BY THE LOYALTY OATH COMMITTEE.

A communication signed by Arthur J. Will, Chief Administrative Officer, E. N. Nicollins, Sheriff, Clifford E. Amodeo, Secretary and Chief Examiner, Civil Service Commission and Harold M. Kennedy, County Counsel, comprising the Loyalty Oath Committee, dated January 31, 1952, relating to the possibility that the United States Congressional House Un-American Activities Committee may convene in Los Angeles in the near future and will at that time subpoena as being six County employees to appear before it, - is presented; and an action of Raymond V. Barry, unanimously approved, and in accordance with recommendations contained in said report, it is hereby declared to be the duty of any employee of the County of Los Angeles who may be subpoenaed by the United States Congressional House Un-American Activities Committee to appear before it and to specifically answer questions propounded by the Committee relating to:

1. Present personal advocacy by the employee of the forceful overthrow of the government of the United States or of any state or political subdivision.
2. Present membership in any organization now advocating the forceful overthrow of the government of the United States or of any state or political subdivision.
3. Past membership in any organization which during the time of the employee's membership advocated the overthrow of the government of the United States or of any state or political subdivision.
4. Questions calling for answers based upon the personal knowledge of the employee of persons, places, and conversations, exclusive of conversations privileged under Section 1861, Code of Civil Procedure.
5. Questions as to membership in the Communist party.

This order does not apply to any question pertaining to any religious belief or membership in any religion or religious group or church.

It is further ordered that any said employee who disobeys the declaration of this duty and order will be considered to have been insubordinate as a Los Angeles County employee or a Los Angeles County district employee.

and that such insubordination shall constitute grounds for discharge and that the department heads are instructed to notify any employee so charged of the contents of this order and that said department heads consider any violation of this order by employees under their jurisdiction as insubordination, and the department heads are further instructed to suspend and discharge any employee violating this order.

By the undersigned employees of the County of Los Angeles reference is made to all employees under the jurisdiction of the Board of Supervisors, the hereby as governing board of the County or any district.

HAROLD J. OSTL, County Clerk of the County of Los Angeles and ex officio Clerk of the Board of Supervisors of said County, do hereby certify that the foregoing is a full, true and correct copy of the Official Minutes of the Board of Supervisors, as entered in Minute Book No. 10, Page 127, in the POSSIBLE APPEARANCE OF CERTAIN GROUPS EMPLOYED BY THE UNITED STATES NATIONAL HOUSE ON-AMERICAN AFFAIRS, INC. (N.A.A.U.P.) OR, ORIGINATED AND BEING NORTH LITIS AS RECOMMENDED BY THE INVESTIGATE COMMITTEE.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Board of Supervisors, this 2nd day of April, 1956.

HAROLD J. OSTL, County Clerk and  
ex officio Clerk of the Board of  
Supervisors of the County of Los  
Angeles, State of California

*Harold J. Ostl*  
County Clerk

128 Before the Civil Service Commission of the  
County of Los Angeles

669479

IN THE MATTER OF THE DISCHARGE OF THOMAS W. NELSON,  
EMPLOYEE

v.

COUNTY OF LOS ANGELES

*Findings*

The above entitled matter having come on regularly for hearing before the Civil Service Commission of the County of Los Angeles on June 11, 1956, and stipulations having been entered into regarding the facts, and documentary evidence having been offered and received in evidence, and the Commission being fully advised in the premises, now finds:

1. That a letter of discharge dated May 2, 1956, was regularly served on said employee, Thomas W. Nelson, who requested a hearing, and the hearing was held on June 11, 1956.

2. That said employee, Thomas W. Nelson, was a permanent employee as a Medical Social Worker in the classified service of the County of Los Angeles on and prior to May 2, 1956.

3. On April 1, 1952, said employee, Thomas W. Nelson, signed the County loyalty oath and the State loyalty oath.

4. That on September 7, 1954 said employee, Thomas W. Nelson, answered "No" to question 15 "Are you now knowingly a member of the Communist Party?" on his application for the position of Medical Social Work Director.

129 5. That on April 4, 1956 said employee, Thomas W. Nelson, was personally served with a copy of an order adopted by the Board of Supervisors of the County of Los Angeles dated February 19, 1952 concerning possible appearance of certain employees before the U.S. Congressional House Un-American Activities Committee. That said order made it the duty of every employee to testify fully and completely when subpoenaed and requested to testify at such a hearing; that refusal to do so constitutes insubordination and grounds for



discharge and instructed department heads to suspend and discharge any employee violating the order.

6. That said employee, Thomas W. Nelson, on April 20, 1956 appeared pursuant to subpoena at a hearing before the United States House of Representatives Committee on Un-American Activities and was sworn and asked a series of questions.

7. That while so testifying, said employee, Thomas W. Nelson, refused to answer each and every one of the following questions "on the basis of the First Amendment, supplemented by the Fifth Amendment of the United States Constitution:"

"Mr. TAVENNER. Will you tell the committee, please, the reason for the termination of your services in Japan?" (p. 565, Exhibition 1, Tr. of hearing before the Committee on April 20, 1956.)

"Mr. TAVENNER. What was the date of the termination of your services in Japan?" (p. 565)

"Mr. TAVENNER. Very well then. Were you returned to the United States under the provisions of Public Law 808 from Japan as a security risk?" (pp. 566-67)

"Did you resort to that remedy provided by Public Law 808?" (p. 567)

"Mr. SCHERER. Why were you returned?" (p. 567)

130 "Mr. TAVENNER. Actually you did not appeal from the decision removing you, or take any steps to avoid it, did you?" (p. 568)

"Mr. TAVENNER. Were you a member of the Communist Party at any time between 1947 and 1949? That was the period you were in Japan." (p. 568)

"Mr. TAVENNER. \* \* \* Will you examine, please, the signature appearing at the bottom of the last page, and state whether or not it is your signature? \* \* \* The question simply was whether or not the signature appearing at the end of the document is your signature." (p. 573)

"Mr. JACKSON. Mr. Nelson, I note this application also, on the last page, question no. 26:

"Do you advocate or have you ever advocated or are you now or have you ever been a member of any organization that advocates the overthrow of the government of the United States by force or violence?" \* \* \* Was that statement a

true statement at the time this application was executed?" (pp. 574-75)

"Mr. JACKSON. Now the Supreme Court and the Congress have defined a Communist Party as an organization which does, in fact, advocate the overthrow of the government by force and violence. Have you at any time been a member of the Communist Party?" (p. 575)

"Mr. TAVENNER. On the date indicated were you a member of the Communist Party?" (p. 576)

"Mr. TAVENNER. During the period 1945 to 1947 when you were serving the United States in Germany were you a member of the Communist Party?" (p. 577)

131 "Mr. TAVENNER. Were you a member of the Communist Party between 1951 and '52 when you served as an officer of the State Parole System of the State of California?" (p. 583)

"Mr. TAVENNER. Are you a member of the Communist Party—

"Mr. SCHERER. Pardon me just a minute.

"Did you ever tell your superior who commended you that you were a member of the Communist Party?" (p. 583)

"Mr. JACKSON. That is substantially it. I wanted to know whether or not you would make a statement today on an official form which was a requisite of employees that he was not a member of the Communist Party." (p. 585)

"Mr. JACKSON. Are you a member of the Communist Party?" (p. 586)

"Mr. JACKSON. I shall put a similar one.

"Are you a member of the Communist Party today?" (p. 586)

S. That any findings of fact inadvertently stated under the title of conclusions is true.

### *Conclusions*

The Civil Service Commission of the County of Los Angeles therefore concludes that said employee, Thomas W. Nelson, was guilty of insubordination and guilty of violating Section 1028.1 of the Government Code of the State of California.

106 NELSON AND GLOBE VS. COUNTY OF LOS ANGELES, ET AL.

That any conclusions inadvertently stated as facts are hereby adopted as conclusions.

The Commission therefore concludes that the facts and reasons justify the discharge of said employee.

Thomas W. Nelson.

Dated this 9th day of August, 1956.

(S) HARRY ALBERT,  
*President.*

(S) HAYDEN F. JONES,  
*Vice-President.*

(S) WINSTON W. CROUCH.

133 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES  
COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT  
C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER  
W. JESSUP, MEMBERS THEREOF; CIVIL SERVICE COMMISSION  
OF LOS ANGELES COUNTY, HARRY ALBERT, PRESIDENT  
THEREOF AND HAYDEN F. JONES AND WINSTON W. CROUCH,  
MEMBERS THEREOF, RESPONDENTS

*Petition for writ of mandate*

Filed November 9, 1956

[File endorsement omitted.]

The clerk is ordered to file this petition without prior service other than that which already may have been made.

JOHN J. FORD,

Nov. 9, 1956.

*Judge.*

I

Petitioner is a resident of the County of Los Angeles, State of California, and a citizen of the United States. He was

employed by the County of Los Angeles, Department of Charities, on April 1, 1952, as a Social Worker; on June 16, 1953, he was appointed to the position of Medical Social Worker, permanent, in the classified service of the County of Los Angeles. Petitioner was so employed by Respondent County of Los Angeles until May 2, 1956, when petitioner was discharged; during all the period of employment petitioner performed the duties of his employment satisfactorily.

## II

B34 The respondent County of Los Angeles is a body corporate and politic, and a political subdivision of the State of California. The respondent Board of Supervisors is the governing agency of the County of Los Angeles; Burton W. Chace is, and at all times mentioned herein has been, a member of and chairman of said Board; and the respondents Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup are, as they have at all times herein been, members of said Board; the respondent Civil Service Commission of Los Angeles County is an agency of the County of Los Angeles with powers and duties as set forth in the Charter of the County of Los Angeles. Respondent Harry Albert is, and at all times mentioned herein, has been a member of and President of said Commission; and the respondents Hayden F. Jones and Winston W. Crouch are, as they have at all times herein been, members of said Commission.

## III

On April 20, 1956, while petitioner was employed as a medical social worker, by the County of Los Angeles, as aforesaid, petitioner was served with a subpoena to appear before the Committee on Un-American Activities of the United States House of Representatives, at Los Angeles, on April 20, 1956; on said date, pursuant to said subpoena, petitioner did appear before said Committee and at said time and place was placed under oath and asked a series of questions by Committee Members and by Counsel for said Committee; the petitioner answered some of said questions, and with respect to others, pertaining to political opinion and association, including mem-

bership in the Communist Party, the petitioner refused to answer said questions, basing his refusal upon the guarantees of the First and Fifth Amendments to the Constitution of the United States.

#### IV

On May 2, 1956 the petitioner was discharged from his employment aforesaid by the County of Los Angeles; the  
135 sole reason for his discharge, as aforesaid, was his assertion of rights guaranteed to him by the First and Fifth Amendments to the Constitution of the United States; and his refusal to answer the questions aforesaid, before said United States Congressional Committee, based upon said provisions in the Constitution of the United States.

Thereafter, and on July 20, 1956, the Civil Service Commission of Los Angeles County, respondent, ruled that said discharge as aforesaid was justified; said ruling was based solely upon the assertion of rights by the petitioner under the First and Fifth Amendments to the Constitution of the United States, and the refusal of the petitioner to answer the questions aforesaid, based upon said First and Fifth Amendments to said United States Constitution.

#### V

On April 1, 1952 petitioner signed a County loyalty oath and a State loyalty oath. On September 7, 1954 the petitioner answered "No", to question No. 15, on his application for the position of medical social worker, which question read "Are you now knowingly a member of the Communist party?"

#### VI

At no time, either prior to the questioning of the petitioner as aforesaid by said United States Congressional Committee, nor at any time thereafter, did any of the respondents make inquiry of the petitioner pertaining to his opinions, political or otherwise, or affiliations or membership, political or otherwise, except as set forth in Paragraph V hereinabove.

## VII

The discharge of the petitioner, as aforesaid, was and is illegal and void; and abridges the constitutional rights of the petitioner as guaranteed to him by the Constitution of the United States and the Constitution of the State of California, in the following respects and particulars:

1. The discharge was and is arbitrary and unreasonable.
- 136 2. The discharge violates the rights of the petitioner under the Constitution of the United States, in that
  - a. With respect to the First and 14th Amendments to the Constitution of the United States, it abridges freedom of thought, freedom of speech and freedom of assembly as guaranteed by said First Amendment;
  - b. With respect to the Fifth Amendment, in that it abridges his right to be free from being a witness against himself;
  - c. With further respect to the 14th Amendment, it abridges his privileges and immunities as a citizen of the United States.
3. The discharge violates the rights of the petitioner under the Constitution of California, in that
  - a. It abridges his right to free speech, as guaranteed by Article I, Section 9, and his right to free assembly as guaranteed by Section 10 of said Article;
  - b. It violates his immunity from being a witness against himself as provided for by Article I, Section 13, of the California Constitution.
4. The questions propounded to him by said United States Congressional Committee, were not within the scope of any lawful authority of said Committee and were not pertinent to any lawful authority thereof.

## VIII

Petitioner has suffered great and irreparable harm by being terminated from his employment and deprived of his means of livelihood in his specialized field of endeavor, and petitioner has no plain, speedy and adequate remedy at law, or otherwise than by this Petition for Writ of Mandate.

Wherefore petitioner prays:



1. A Writ of Mandate issue from this Honorable  
 137 Court directing respondent Civil Service Commission of  
 Los Angeles County, and its President and members  
 Harry Albert, Hayden F. Jones and Winston W. Crouch, re-  
 spectively, to rescind the order terminating petitioner's em-  
 ployment; directing respondents County of Los Angeles, Board  
 of Supervisors of Los Angeles County, and Burton W. Chace,  
 Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger  
 W. Jessup, Chairman and members of said Board respectively,  
 to re-instate the petitioner to his employment as of the date  
 of the discharge of the petitioner, and to reimburse the peti-  
 tioner for loss of compensation because of said discharge;

2. That an Alternative Writ issue from this Honorable Court  
 directing respondents County of Los Angeles, Board of Super-  
 visors of Los Angeles County, and Burton W. Chace, Herbert  
 C. Legg, Kenneth Hahn, John Anson Ford and Roger W.  
 Jessup, Chairman and members of said Board, respectively, to  
 re-instate the petitioner to his employment as of the date of  
 the discharge of the petitioner, and to reimburse the petitioner  
 for loss of compensation because of said discharge; and direct-  
 ing said respondents Civil Service Commission of Los Angeles  
 County, and its President and members, Harry Albert, Hayden  
 F. Jones and Winston W. Crouch, respectively, to rescind the  
 order terminating petitioner's employment, and ordering said  
 respondents to show cause, at a time and place to be set by  
 the Court, as to why a permanent writ of mandate should not  
 issue directing respondents County of Los Angeles, Board of  
 Supervisors of Los Angeles County, and Burton W. Chace,  
 Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger  
 W. Jessup, Chairman and members of said Board, respectively,  
 to re-instate the petitioner to his employment as of the date of  
 the discharge of the petitioner, and to reimburse the petitioner  
 for loss of compensation because of said discharge; and direct-  
 ing said respondents Civil Service Commission of Los Angeles  
 County, and its President and members, Harry Albert, Hayden  
 F. Jones and Winston W. Crouch, respectively, to re-  
 138 scind the order terminating petitioner's employment;

3. For costs of suit;

4. For such other and further relief as petitioner may be entitled to.

A. L. WIRIN,  
WILLIAM T. PILLSBURY,  
By A. L. Wirin,  
A. L. WIRIN,  
*Attorneys for Petitioner.*

(Verification.)

139 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF; HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; CIVIL SERVICE COMMISSION OF LOS ANGELES COUNTY, HARRY ALBERT, PRESIDENT THEREOF, AND HAYDEN F. JONES AND WINSTON W. CROUCH, MEMBERS THEREOF, RESPONDENTS

*Alternative writ of mandate*

Filed November 9, 1956

*The People of the State of California to County of Los Angeles; Board of Supervisors, Los Angeles County, Burton W. Chace, Chairman Thereof, Herbert C. Legg, Kenneth Hahn, John Anson Ford, and Roger W. Jessup, Members Thereof; Civil Service Commission of Los Angeles County, Harry Albert, President Thereof, and Hayden F. Jones and Winston W. Crouch, Members Thereof, Respondents Above Named:*

[File endorsement omitted.]

Whereas, it manifestly appears to us by the verified petition of Thomas W. Nelson, that notwithstanding there be no cause

for the discharge of petitioner as an employee of the  
140 County of Los Angeles, the respondents have discharged  
said petitioner from his position, and that there is not  
a plain, speedy, or adequate remedy at law.

Therefore, we do command you, County of Los Angeles,  
Board of Supervisors of Los Angeles County, and Burton W.  
Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and  
Roger W. Jessup, Chairman and Members of said Board, re-  
spectively, to re-instate the petitioner to his employment as  
of the date of the discharge of the petitioner, and to reimburse  
the petitioner for loss of compensation because of said dis-  
charge; and

We Do Command You, Civil Service Commission of Los  
Angeles County, and its president and members, Harry Albert,  
Hayden F. Jones and Winston W. Crouch, respectively, to re-  
scind the order terminating petitioner's employment,

Or That You Show Cause before this Court, the Superior  
Court of Los Angeles County, at Los Angeles, California in  
Department 34 thereof on the 23d day of November 1956, at  
the hour of 9:30 a.m., why you have not done so.

(SEAL)

HAROLD J. OSTLY,

*Clerk.*

By J. E. ROSE,

*Deputy.*

Let the within writ issue.

Dated: November 9, 1956.

JOHN J. FORD,

JOHN J. FORD,

*Judge, Superior Court.*

141 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS; LOS ANGELES COUNTY; BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; CIVIL SERVICE COMMISSION OF LOS ANGELES COUNTY, HARRY ALBERT, PRESIDENT THEREOF, AND HAYDEN F. JONES AND WINSTON W. CROUCH, MEMBERS THEREOF, RESPONDENTS

*Respondents return to the alternative writ of mandate; answer to the petition for said writ, and points and authorities*

Filed November 29, 1956

[File endorsement omitted.]

Comes Now, the respondents above named and for their return to the Alternative Writ of Mandate issued herein answer the Petition for said Writ as follows:

I

Answering Paragraph I of said Petition, respondents deny that during all of the period of employment, petitioner performed the duties of his employment satisfactorily and in this connection allege that petitioner failed to perform the duties of his employment satisfactorily in that he failed and refused to answer certain questions propounded to him by counsel for and members of the Committee on Un-American Activities, of the House of Representatives of the United States Congress as required by law when testifying as a  
142 witness under oath before said committee at a hearing held on April 20, 1956.

II

Answering Paragraph II of said Petition, respondents admit all of the allegations therein contained.

## III

Answering Paragraph III of said Petition, respondents admit all of the allegations therein contained and in this connection allege that at said time and place petitioner refused to give direct and unequivocal answers to many questions propounded to him by counsel for and members of said committee. Respondents allege that petitioner refused to answer questions propounded by counsel for and members of said committee relating to his membership in organizations advocating the forceful or violent overthrow of the government of the United States and his present or past membership in the Communist Party; that he refused to cooperate with said committee in its investigation by his evasive replies to and refusal to answer questions propounded to him; that petitioner persistently attempted to hinder and thwart said committee in its investigation by his evasive replies to and refusal to answer many of the questions propounded to him by counsel for and members of said committee.

## IV

Answering Paragraph IV of said Petition, respondents allege that on May 2, 1956, William A. Barr, as Superintendent of Charities, Department of Charities, County of Los Angeles, discharged petitioner from his employment for his attitude and conduct before said committee and his refusal to answer the questions propounded to him by counsel for and members of the committee. That a copy of the Notice of Discharge, marked Exhibit "A" is attached hereto, made a part hereof and referred to herein. That on July 20, 1956, the Civil Service Commission of Los Angeles County held a hearing upon said discharge and found that the discharge of petitioner was justified.

Answering Paragraphs V and VI of said Petition, respondents admit all of the allegations therein contained.

VI

Answering Paragraphs V and VI of said Petition, respondents all of the allegations therein contained and in this connection allege that the discharge of the petitioner was legal and was required by the provisions of Section 1028.1 of the Government Code of the State of California.

VII

Answering Paragraph VIII of said Petition, respondents deny all of the allegations therein contained, except that respondents admit that petitioner has no plain or speedy remedy at law. Further answering said paragraph, respondents allege that if petitioner has suffered any harm, as alleged therein, it was not due to any act of the respondents, but due solely to the petitioner's conduct before said Committee on Un-American Activities and in direct violation of the laws of the State of California.

Wherefore, respondents pray that the Peremptory Writ of Mandate be denied and the Alternative Writ of Mandate discharged, and for their costs herein incurred.

Respectfully submitted,

HAROLD W. KENNEDY,

*County Counsel,*

WM. E. LAMOREAUX,

*Assistant County Counsel;*

AND FRED R. METHENY,

*Deputy County Counsel,*

BY FRED R. METHENY,

*Attorneys for Respondents.*

(Points and authorities on file but omitted herefrom.)

144

*Exhibit A to respondent's return, etc.*

MAY 2, 1956.

Mr. THOMAS W. NELSON,

*1321 Atlantic Avenue,*

*Long Beach 13, California.*

DEAR SIR: You are hereby notified that, effective this date you are discharged from your position of Medical Social



Worker, Bureau of Medical Social Service, Department of Charities of the County of Los Angeles without further notice. This action is based upon the grounds that you have been guilty of insubordination and of violation of Section 1028.1 of the Government Code of the State of California which provides:

"It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the state or local agency by which such employee is employed, to appear before such governing body, or a committee or subcommittee thereof, or by a duly authorized committee of the Congress of the United States, or of the Legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

(a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States or of any state.

(b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States or of any state.

(c) Past knowing membership at any time since September 10, 1948, in any organization which, to the knowledge of such employee, during the time of the employee's membership advocated the forceful or violent overthrow of the Government of the United States or of any state.

145 (d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since September 10, 1948.

Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law."

The specific facts which are the basis for the above grounds of your discharge are that you were duly and regularly sub-

penaed to appear before the United States House of Representatives Committee on Un-American Activities, a duly authorized committee of the Congress of the United States; that on April 20, 1956, you did appear before said committee; that you were put under oath and were asked a series of questions by committee members and Counsel of said committee, which questions directly related to the above listed categories, including the following questions:

"Were you a member of the Communist Party at any time between 1947 and 1949? That was the period you were in Japan."

"Have you at any time been a member of the Communist Party?"

"Were you a member of the Communist Party between 1951 and '52 when you served as an officer of the State parole system for the State of California?"

"Are you a member of the Communist Party today?";

that you refused to answer under oath any and all of the above questions propounded to you by the Counsel of the United States House of Representatives Committee on Un-American Activities.

On April 4, 1956, you were personally served a copy of the Board Order of February 19, 1952, concerning the possible appearance of certain employees before the House Un-American Activities Committee. This Board Order related to your duty to testify as a County employee when appearing before said committee.

146 You may within ten days of service upon you of this letter file a written answer to these charges with this office sending a copy thereof to the County Civil Service Commission, 501 North Main Street, Los Angeles 12, California.

118 NELSON AND GLOBE VS. COUNTY OF LOS ANGELES, ET AL.

You may, if you so desire, within ten days of service upon you of this letter request a hearing on these charges before said Civil Service Commission.

Yours very truly,

(S) William A. Barr,  
WILLIAM A. BARR,  
*Superintendent of Charities.*

WAB:AK:ba.

cc: Civil Serv. Comm. (2), County Counsel (2), Payroll  
Division Head, Personnel Mgr., Char.

147 Proof of service (omitted in printing).

148 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES, ET AL., RESPONDENTS

No. 669480

ARTHUR GLOBE, PETITIONER

v.

COUNTY OF LOS ANGELES, ET AL., RESPONDENTS

*Memorandum for counsel*

[File endorsement omitted.]

January 30, 1957

Since the above-entitled cases were argued and submitted together, one memorandum will be sufficient to indicate to counsel the basis of the determination of the court in each case.

In each of the cases before the court, the petitioner was discharged from county employment upon the ground that he had been guilty of insubordination and of violation of Section

1028.1 of the Government Code of the State of California inasmuch as he had refused to answer certain questions under oath as a witness before the United States House of Representatives Committee on Un-American Activities. The record in each case discloses that such refusal was based upon a claim of privilege under the Fifth Amendment of the Constitution of the United States. The last paragraph of said Section 1028.1 provides:

"Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law."

The court has reached the conclusion that there were some questions asked of each witness, and as to which he claimed privilege under the Fifth Amendment, which related to subject-matter embraced within said Section 1028.1 (See *Steinmetz v. California State Board of Education*, 44 Cal. 2d 816). In this connection, it is interesting to note that in the opening brief of appeal of Mass before the District Court of Appeal (1 Civil No. 16435), in the case discussed by counsel in memoranda filed herein and to which reference is hereinafter made, it is stated that the questions asked of Mass before a subcommittee of the House of Representatives Committee on Un-American Activities were:

"Have you been a member of the Communist Party since that date (19th of October, 1950)?"

"Are you a member of the party today?"

"Well, was the statement (Levering Act Oath) that you made under Oath true when you made it?"

Mass' counsel, on page 8 of that brief, states:

"At no time was the appellant asked about *knowing* membership in the Communist Party or whether he belonged to the Communist Party knowing that it advocated the overthrow of the government by force and violence."

It is to be noted that in the Mass case the Supreme Court apparently found no merit in any contention based upon the

wording of the questions asked: In the cases at bar, there is no merit in any similar contention.

In challenging the validity of his discharge, each petitioner relies on *Slochower v. Board of Higher Education*, 350 U.S. 551, decided in 1956. In the recent case of *Board of Education v. Mass*, 47 A.C. 501 (decided December 21, 1956), Mr. Chief Justice Gibson stated:

"We understand the holding of the *Slochower* case to be that a public employee may be dismissed for invoking the privilege against self-incrimination only if, after a full hearing in which he is afforded an opportunity to explain his reasons for claiming the privilege, it is determined that his refusal to answer is sufficient under the circumstances to warrant dismissal."

With reference to Section 12604 of the Education Code which contains language substantially like that of said Section 1028.1, Mr. Chief Justice Gibson states:

"Any construction which would require us to hold that Section 12604 is unconstitutional should be avoided if possible (*Bodinson Mfg. Co. v. California Emp. Com.*, 17 Cal. 2d 321, 326-327), and we are of the opinion that the statute may be reasonably interpreted in a manner consistent with due process. Section 12604, as we have seen, provides for the dismissal of an employee 'in the manner provided by law', and we construe these words to mean that, before an employee  
151 may be found guilty of insubordination or dismissed for refusing to answer under the claim of privilege against self-incrimination, there must be a full hearing and a determination that his reasons for invoking the privilege are not sufficient. Factors of the type mentioned in the portion of the *Slochower* decision quoted above should, of course, govern the determination as to the sufficiency of the employee's reasons."

The factors to be considered may be gathered from the following excerpt from the *Slochower* case which discusses the deficiencies in the charter provision then before the court:

"No consideration is given to such factors as the subject matter of the questions, remoteness of the period to which they are directed, or justification for exercise of the privilege. It

matters not whether the plea resulted from mistake, inadvertence or legal advice conscientiously given whether wisely or unwisely. The heavy hand of the statute falls alike upon all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive."

Mr. Chief Justice Gibson points out that at the required hearing "any matter germane to the charges filed against him would be open to inquiry", as well as the sufficiency of the employee's reasons for invoking the privilege, all for the purpose of determining whether his dismissal is warranted.

Turning first to the Nelson case, the reporter's transcript discloses that at the hearing held pursuant to Mr. Nelson's request certain stipulations as to pertinent facts were  
 152 entered into by counsel. Thereafter, the chairman of the Civil Service Commission asked Mr. Nelson's counsel if there would be any witnesses (Transcript, page 8, line 26, to page 9, line 7). But no witness was offered and Mr. Nelson's counsel stated that he was ready to rest (Transcript, page 11, lines 18-19), after first having made the following statement (Transcript, page 11, lines 11-14):

"The employee does not care to offer any evidence or testimony at this time. He merely wishes to make a statement through counsel as to his position in regard to his discharge."

The statement thereafter made by counsel was essentially an attack upon the constitutionality of said Section 1028.1 of the Government Code as applied to Mr. Nelson.

It is clear, therefore, that Mr. Nelson was afforded the hearing which due process requires under the Slochower and Mass cases. There is no basis for setting aside his dismissal from County employment.

In the Globe case, Mr. Globe was afforded no hearing by the Civil Service Commission or by the respondents herein. The basis for such lack of hearing was that Mr. Globe was a temporary employee and that there was no provision for such hearing before the Civil Service Commission inasmuch as his employer could terminate his employment at will. However, it would seem that the termination of his status even as a temporary employee solely because of his use of a constitutional privilege and without affording him the type of hearing and



determination prescribed by the Slochower case would constitute an arbitrary discrimination which is prohibited (cf. *Housing Authority v. Cordova*, 130 Cal. App. 2d Supp. 883, 885).

153 It may be true that there is no express provision to be found in any legislation relating to or enacted by the County of Los Angeles for the holding of a hearing before the Civil Service Commission in such a case. However, the respondents in this case would still be required under the language of Section 1028.1 of the Government Code to provide Mr. Globe an appropriate hearing if the words "in the manner provided by law" therein used have the meaning of the same words used in the statute involved in the Mass case, an interpretation which is reasonable and is consistent with the concept of due process.

A peremptory writ of mandate will be denied and the alternative writ discharged in the Nelson case. Counsel for respondents are requested to prepare findings of fact, conclusions of law and the form of judgment in accordance with the views herein expressed.

In the Globe case, a peremptory writ of mandate will issue, commanding respondents to grant the petitioner a full hearing with respect to the matter of his discharge for the purpose of making a determination as to whether his reasons for invoking the privilege under the Fifth Amendment are sufficient, at which hearing any matter germane to the charges against the petitioner will be open to inquiry. Counsel for petitioner are requested to prepare the findings of fact, conclusions of law and the form of judgment, together with the form of the writ, in accordance with the views herein expressed.

Dated this 30th day of January, 1957.

JOHN J. FORD,

*Judge of the Superior Court.*

154 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES  
COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT  
C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER  
W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SU-  
PERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES,  
COUNTY OF LOS ANGELES, RESPONDENTS

*Findings of fact and conclusions of law*

March 26, 1957

[File endorsement omitted.]

This proceeding came on regularly for trial on December 10, 1956, in Department 34 of the above entitled court, Honorable John J. Ford, Judge Presiding, A. L. Wirin, William T. Pillsbury and Fred Okrand appearing for the petitioner, and Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Assistant County Counsel, and Fred R. Metheny, Deputy County Counsel, appearing for the respondents, and the court having considered the evidence and heard the arguments of counsel, and the matter having been submitted, now makes its Findings of Fact and Conclusions of Law as follows:

The Court finds:

I

It is true that from June 16, 1953, to May 2, 1956, petitioner was a permanent employee in the classified service of  
155 the County of Los Angeles, and held the position of medical social worker.

II

It is true that on April 20, 1956, he testified under oath as a witness before the Committee on Un-American Activities

of the House of Representatives of the United States Congress at a hearing held by said Committee in the City of Los Angeles.

### III

It is true that at said time and place petitioner refused to answer questions asked of him by members of said Committee relating to his knowing present and past knowing membership in the Communist Party since September 10, 1948.

### IV

It is true that on May 2, 1956, William A. Barr, as Superintendent of Charities of the County of Los Angeles, notified petitioner in writing that he was discharged from his employment for his refusal to answer questions propounded to him by counsel for and members of said Committee.

### V

It is true that on July 20, 1956, the Civil Service Commission of Los Angeles County, at the request of the petitioner, held a hearing upon his discharge and determined that the discharge of petitioner was justified.

### VI

It is true that at said hearing petitioner failed to offer any evidence or testimony as to his reasons for refusing to answer questions at the hearing held by the House Un-American Activities Committee or to give explanation as to other matters germane thereto.

156 From the Aforesaid Findings of Fact the Court Concludes as a Matter of Law:

### I

That Section 1028.1 of the Government Code of the State of California, relating to the obligation of a county employee to answer questions concerning membership in the Communist Party or be guilty of insubordination and therefore be suspended and dismissed from his employment in the manner

provided by law, is valid and constitutional as applied to the petitioner herein.

II

That the Committee on Un-American Activities of the House of Representatives, before whom petitioner appeared on April 20, 1956, in the City of Los Angeles, was a duly appointed, constituted and acting Committee of Congress authorized and empowered to conduct the investigation which was conducted at said time and place, and that said Committee had the power to ask the questions which it did ask or cause to be asked of the petitioner at that time.

III

That the petitioner violated Section 1028.1 of the Government Code of the State of California.

IV

That the petitioner was discharged in the manner prescribed by law, and that the Civil Service Commission of the County of Los Angeles gave him a full and fair hearing on his discharge, at which he had the opportunity to explain the reasons for his refusal to testify.

V

That sufficient grounds existed for the dismissal of the petitioner as a permanent employee of Los Angeles County.

VI

That the peremptory writ of mandate should be denied and the alternative writ discharged.

157 Let judgment be entered accordingly.

Dated March 26, 1957.

JOHN J. FORD,  
*Judge of the Superior Court.*

126 NELSON AND GLOBE VS. COUNTY OF LOS ANGELES, ET AL.

158 In the Superior Court of the State of California

No. 669479

THOMAS W. NELSON, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS

*Judgment*

Dated March 26, 1957 and entered March 27, 1957

[File endorsement omitted.]

This proceeding having come on regularly for trial on December 10, 1956, in Department 34 of the above entitled Court, Honorable John J. Ford, Judge Presiding, A. L. Wirin, William T. Pillsbury and Fred Okrand appearing for the petitioner, and Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Assistant County Counsel, and Fred R. Metheny, Deputy County Counsel, appearing for the respondents, and the Court having considered the evidence and heard the arguments of counsel, and the matter having been submitted, and the Court having made and filed its Findings of Fact and Conclusions of Law and having ordered judgment to be entered in accordance therewith.

Now, Therefore, It Is Hereby Ordered, Adjudged and  
159 Decreed that the peremptory writ of mandate should be denied, the alternative writ discharged, and that the respondents did lawfully dismiss the petitioner as a permanent employee in the classified service of the County of Los Angeles.

Respondents are to be awarded costs in this proceeding in the amount of \$6.50.

Dated this 26th day of March, 1957.

JOHN J. FORD,  
*Judge of the Superior Court.*

160 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669479

*Notice of entry of judgment*

Filed April 1, 1957

*To the Petitioner, Thomas W. Nelson, and to His Attorneys,  
A. L. Wirin and William T. Pillsbury:*

[File endorsement omitted.]

[Title omitted.]

You Will Please Take Notice that on March 27, 1957, Judgment was entered in favor of the respondents herein and against the petitioner in Book 3264, page 206, including costs.

Dated: April 1, 1957.

HAROLD W. KENNEDY,

*County Counsel,*

WM. E. LAMOREAUX,

*Assistant County Counsel and*

FRED R. METHENY,

*Deputy County Counsel,*

By FRED R. METHENY,

*Attorneys for Respondents.*

161 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669479

*Notice of appeal*

Filed May 24, 1957

[File endorsement omitted.]

[Title omitted.]

*To the Clerk of the Above-Entitled Court:*

You will please take notice that the petitioner in the above-entitled action hereby appeals to the District Court of Appeal of the State of California, Second Appellate District, from the



judgment therein entered by the court in this action on the 27th day of March, 1957, in favor of the Respondents and against the Petitioner and from the whole thereof.

Dated this 23d day of May, 1957.

A. L. WIRIN,

FRED OKRAND,

WILLIAM T. PILLSBURY,

By William T. Pillsbury,

WILLIAM T. PILLSBURY,

*Attorneys for Petitioner.*

162 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669479

*Petitioner's notice and request for clerk's transcript on appeal*

Filed May 24, 1957

[File endorsement omitted.]

[Title omitted.]

*To the Clerk of the Above Entitled Court:*

Please take notice that the petitioner, Thomas W. Nelson, having filed a notice of appeal herein, does hereby request that the Clerk of the above entitled Court prepare a transcript of the following documents in accordance with the Rules on Appeal of the State of California in force and effect:

1. All Pleadings filed by Respondents and Petitioner.
2. The Judgment and Memorandum for Counsel.
3. Notice of Entry of Judgment.
4. Notice of Appeal, together with all exhibits either offered or admitted into evidence by the Respondents or the Petitioner.

Dated this 23d day of May, 1957.

A. L. WIRIN,

FRED OKRAND,

WILLIAM T. PILLSBURY.

By William T. Pillsbury,

WILLIAM T. PILLSBURY,

*Attorneys for Petitioner.*

163. In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669479

*Respondents' notice and request for additions to clerk's transcript on appeal*

Filed June 3, 1957

[File endorsement omitted.]

[Title omitted.]

*To the Clerk of the Above Entitled Court:*

Please take notice that the respondents, County of Los Angeles, et al., having received notice of appeal herein, do hereby request that the Clerk of the above entitled Court add the following documents to the transcript on appeal:

1. Alternative Writ of Mandate herein; and
2. Findings of Fact and Conclusions of Law.

Dated: June 3, 1957.

HAROLD W. KENNEDY,

*County Counsel,*

And Fred R. Metheny,

FRED R. METHENY,

*Deputy County Counsel,*

*Attorneys for Respondents.*

164 [Clerk's certificates to foregoing transcript omitted in printing.]

130 NELSON AND GLOBE VS. COUNTY OF LOS ANGELES, ET AL.

165 In the District Court of Appeal of the State of  
California, Second Appellate District

2d Civil No. 22680

THOMAS W. NELSON, PETITIONER AND APPELLANT

v.

COUNTY OF LOS ANGELES, ET AL., RESPONDENTS

2d Civil No. 22775

ARTHUR GLOBE, PETITIONER AND RESPONDENT

v.

COUNTY OF LOS ANGELES, ET AL., RESPONDENTS AND  
APPELLANTS

*Application for leave to file memorandum on United States  
Supreme Court decisions decided subsequent to oral  
argument*

July 21, 1958

Application is herewith made by Appellant Nelson in No. 22680 and by Respondent Globe in No. 22775 for leave to file the accompanying Memorandum discussing two cases (Lerner v. Casey, No. 165, Oct. Term 1957; 26 U.S. Law Week 4509 and Beilan v. Board of Public Education, No. 63, Oct. Term 1957; 26 U.S. Law Week 4512) decided by the United States Supreme Court on June 30, 1958, subsequent to the oral argument in these cases and subsequent to the filing of the Supplemental Brief by said parties.

166 It is the view of counsel for said parties that the two cases mentioned bear on the questions involved in the instant cases and that discussion of them can be of assistance to the court in arriving at its decision herein.

Dated: July 21, 1958.

Respectfully submitted.

A. L. WIRIN,

FRED OKRAND,

WILLIAM T. PILLSBURY,

*Attorneys for Appellant Nelson and Respondent Globe.*

Nelson and Globe have argued in a number of places (e.g. Nelson, Op. Br. p. 17; Reply Br. 8-11; Globe Br. pp. 6-7; Supplemental Br. on behalf of both, p. 5, as well as oral arguments) that there is a fundamental constitutional due process distinction between the discharge of a public employee for refusal to answer questions put to him by his employer having to do with fitness for employment and the discharge of the employee for refusal to answer questions on constitutional grounds before a Congressional Investigating

Committee, having nothing to do with fitness for employment. The latter is of course, the instant cases and we have argued (e.g. Nelson Reply Br. p. 10) that where the discharge is under such circumstances, *Slochower v. Board of Higher Education*, 350 U.S. 551, teaches that the discharge is invalid under the due process clause.

This distinction has again been made and emphasized by the United States Supreme Court in its June 30, 1958 decision in *Lerner v. Casey*, No. 165, Oct. Term, 1957, 26 U.S. Law Week 4509, and *Beilan v. Board of Public Education*, No. 63, Oct. Term, 1957, 26 U.S. Law Week 4512.

In the *Lerner* case, the employee had refused to answer questions asked by his employer as to whether he was then a member of the Communist Party. For this refusal he was discharged. In sustaining the discharge the Supreme Court distinguished the situation in that case from that in *Slochower* (and, as we say, the situation in the case at bar). Thus the court said (26 Law Week at 4511):

"\* \* \* (I)t seems clear that the discharge here in any event was unlike that in *Slochower v. Board of Higher Education*. \* \* \* Further, in *Slochower* such a claim had been asserted in a federal inquiry having nothing to do with the qualifications of persons for state employment and the (New York) Court (of Appeals) in its opinion carefully distinguished that situation from one where, as here, a State is conducting an inquiry into fitness of its employees \* \* \*"

Similarly, in Beilan the employee refused to answer questions of his employer and was discharged. In sustaining the discharge, the Supreme Court said (26 Law Week at 4514):

"Our recent decisions in *Slochower v. Board of Education*, 350 U.S. 551, and *Konigsberg v. State Bar of California*, 353 U.S. 252, are distinguishable. In each we envisioned and distinguished the situation now before us. In the *Slochower* case, at 558, the Court said:

"It is one thing for the city authorities themselves to inquire into Slochower's fitness, but quite another for his discharge to be based entirely on events occurring before a federal committee whose inquiry was announced as not directed at 'the property, affairs, or government of the city, or \* \* \* official conduct of city employees.'" In this respect the present case differs materially from *Garner* [314 U.S. 716], where the city was attempting to elicit information necessary to determine the qualifications of its employees. Here, the Board had possessed the pertinent information for 12 years, 170 and the questions which Professor Slochower refused to answer were admittedly asked for a purpose wholly unrelated to his college functions. On such a record the Board cannot claim that its action was part of a bona fide attempt to gain needed and relevant information."

It is thus evident that the discharge in the case at bar falls directly within the *Slochower* case, the meaning of which, if there were any doubt before, has been made crystal clear by the Supreme Court in the *Lerner* and *Beilan* cases.

#### CONCLUSION

The judgment in *Nelson* should be reversed and that in *Globe* affirmed.

Respectfully submitted,

A. L. WIRIN,  
FRED OKRAND,  
WILLIAM T. PILLSBURY,  
*Attorneys for Appellant Nelson  
and Respondent Globe.*

171 In the District Court of Appeal of the State of California, Second Appellate District, Division One

Civ. No. 22680

THOMAS W. NELSON, PETITIONER AND APPELLANT

v.

COUNTY OF LOS ANGELES, BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; CIVIL SERVICE COMMISSION OF LOS ANGELES COUNTY, HARRY ALBERT, PRESIDENT THEREOF, AND HAYDEN F. JONES AND WINSTON W. CROUCH, MEMBERS THEREOF, DEFENDANTS AND RESPONDENTS

Appeal from a judgment of the Superior Court of Los Angeles County. John J. Ford, Judge. Affirmed.

For Appellant: A. L. Wirin, Fred Okrand, William T. Pillsbury.

For Respondents: Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Assistant County Counsel, Fred R. Metheny, Deputy County Counsel.

*Opinion*

Filed September 18, 1958

[File endorsement omitted.]

By stipulation this appeal was consolidated for oral argument with the companion case of Globe v. County of Los Angeles, Civil No. 22775, this day decided, involving  
172 similar and related facts and questions of law.

On June 16, 1953, Thomas W. Nelson became a permanent civil service employee of the county of Los Angeles in the capacity of a medical social worker. On April 20, 1956, he was summoned to appear before a subcommittee on un-American activities of the United States House of Representatives and after being sworn refused to answer a series of questions pertaining to his political opinions, associations and knowing membership in the communist party. He based his



refusal on the First Amendment of the United States Constitution and on a claim of privilege against self-incrimination under the Fifth Amendment. Petitioner was discharged from county employment on May 2, 1956, on the ground that he had been guilty of insubordination and a violation of section 1028.1 of the Government Code. Thereafter, he appealed to the Civil Service Commission and was granted a hearing before that body. Pursuant thereto, he personally appeared before it on June 11, 1956. On August 9, 1956, the commission filed its findings and conclusions. It found that petitioner refused to answer certain questions under oath as a witness before the United States House of Representatives Committee on Un-American Activities and concluded that he was guilty of insubordination and a violation of section 1028.1 of the Government Code and subject to discharge from employment.

173 Petitioner filed a petition for writ of mandate in the superior court seeking reinstatement. The trial court found that at the hearing before the Civil Service Commission petitioner failed to offer any evidence as to his reasons for refusing to answer questions before the subcommittee, or to give explanation as to other matters germane thereto; and concluded that petitioner had been accorded a full and fair hearing on his discharge, at which he was given the opportunity to explain the reasons for his refusal to testify, and that he was discharged "in the manner provided by law." The petition for writ of mandate was denied and petitioner appeals from that judgment.

Unlike the companion case of *Globe v. County of Los Angeles*, Civil No. 22775, decided as of this date, petitioner herein, a permanent employee, upon his request, was accorded a hearing before the Civil Service Commission. In the opinion of the trial court, as of the reviewing court in the present appeal, appellant was afforded the opportunity for a full hearing which due process requires under the cases of *Slochower v. Board of Ed. of N.Y.*, 350 U.S. 551, and *Board of Education v. Mass.*, 47 Cal. 2d 494.

The record in the instant case discloses that at the hearing before the Civil Service Commission petitioner appeared with

counsel. The county of Los Angeles, after having  
 174 offered, by way of stipulation, certain facts concerning  
 petitioner's employment with the county of Los Angeles,  
 his appearance before the United States House of Representatives  
 Committee on Un-American Activities, his failure to answer  
 certain questions, and a transcript of the hearing before  
 the committee covering the testimony of petitioner, rested  
 its case. The chairman then suggested that all witnesses  
 be sworn and asked, "Is anybody going to testify in this  
 case?" to which the petitioner's counsel answered: "Perhaps  
 Mr. Nelson will testify." Petitioner then offered his entire  
 personnel file in evidence, together with a copy of the introductory  
 statement made by Congressman Moulder as to the scope and  
 purpose of the hearings before the House Committee on Un-  
 American Activities. Before resting his case, counsel for  
 petitioner stated, "The employee does not care to offer any  
 evidence or testimony at this time. He merely wishes to make  
 a statement through counsel as to his position in regard to  
 his discharge." The chairman of the commission asked  
 counsel if that meant he was ready to rest his case. Counsel  
 answered in the affirmative and the chairman followed it up  
 with the further question, "Now you just want to argue?" to  
 which counsel replied, "That is all." The petitioner did not  
 take the stand, offered no testimony and no witnesses. Counsel's  
 argument was essentially an attack upon the constitutionality  
 of section 1028.1 of the Government Code as applied to  
 him.

175 Petitioner, although given a clear opportunity to do  
 so, declined to testify at the hearing before the commission  
 or offer any evidence concerning his reasons, if any, for  
 refusing to testify before the House subcommittee or matters  
 germane thereto.

Both parties rely upon *Slochower v. Board of Ed. of N.Y.*,  
 supra, 350 U.S. 551, and *Board of Education v. Mass.*, supra,  
 47 Cal. 2d 494.

Any point raised by petitioner that the statutory requirements  
 of section 1028.1 bar or prohibit his privilege of self-incrimination  
 has heretofore been decided by the Supreme

Court in the case of *Steinmetz v. Cal. State Board of Education*, 44 Cal. 2d 816. The court said, at page 824: "Moreover, a person may properly be required to disclose information relevant to fitness and loyalty as a reasonable condition for obtaining or retaining public employment, even though the disclosure, under some circumstances, may amount to self-incrimination. (Citations.) A public employee, of course, cannot be forced to give an answer which may tend to incriminate him, but he may be required to choose between disclosing information and losing his employment." A like holding is found in the case of *Board of Education v. Mass*, 47 Cal. 2d 494, relative to section 12604 of the Education Code, which contains substantially the same language found in section 1028.1, here under consideration. At page 498, 176 the court stated: "A teacher may properly be required to disclose information relative to fitness and loyalty as a reasonable condition for obtaining or retaining public employment, even though the disclosure under some circumstances may amount to self-incrimination. (See *Steinmetz v. California State Board of Education*, 44 Cal. 2d 816, 824 [285 P. 2d 617]; *Pockman v. Leonard*, 39 Cal. 2d 676, 687 [249 P. 2d 267]; *Christal v. Police Com.*, 33 Cal. App. 2d 564, 567 et seq. [92 P. 2d 416].)"

Although the Supreme Court has previously held that under section 1028.1 of the Government Code and similar legislation providing for the dismissal of a public employee who fails or refuses to answer questions propounded by a legislative committee relating to past or present membership in the Communist party, an employee shall be deemed guilty of insubordination and dismissed in a manner provided by law (*Board of Education v. Mass*, 47 Cal. 2d 494; *Steinmetz v. Cal. State Board of Education*, 44 Cal. 2d 816; *Adler v. Board of Education*, 342 U.S. 485), petitioner herein urges that section 1028.1 of the Government Code is unconstitutional as applied to him. He argues that to have explained his reasons for invoking the privilege at the hearing before the commission would have been meaningless under the statute because it

177 flatly provides that any employee who refuses to answer on any ground whatsoever shall be guilty of insubordination and a violation of the section and shall be dismissed "in the manner provided by law."

The California Supreme Court does not accept this strict interpretation. (Board of Education v. Mass, 47 Cal. 2d 494.) It recognizes a discretion on the part of the employer which may be exercised if it deems the employee's reasons for refusing to answer sufficient. In discussing *Slochower v. Board of Ed. of N.Y.*, 350 U.S. 551, holding that summary dismissal violated the constitutional requirements of due process because no consideration is given to such factors as the subject matter of the questions, remoteness of the period to which they are directed, or justification for exercise of the privilege or whether the plea resulted from mistake, inadvertence, or legal advice conscientiously given, either wisely or unwisely, our Supreme Court in the Mass case made it clear that it understood that the *Slochower* case held that a public employee may be dismissed for invoking the privilege against self-incrimination only if "after a full hearing in which he is afforded an opportunity to explain his reasons for claiming the privilege, it is determined that his refusal to answer is sufficient under the circumstances to warrant dismissal." (page 499.) A full hearing under section 1028.1 of the Government Code is guaranteed to a public employee by 178 the use of the language "in the manner provided by law." The court in the Mass case so interpreted this language, and at page 499 stated: "Section 12604, as we have seen, provides for the dismissal of an employee 'in the manner provided by law,' and we construe these words to mean that, before an employee may be found guilty of insubordination or dismissed for refusing to answer under the claim of privilege against self-incrimination, there must be a full hearing and a determination that his reasons for invoking the privilege are not sufficient. Factors of the type mentioned in the *Slochower* decision should, of course, govern the determination as to the sufficiency of the employee's reasons." For what purpose would the Supreme Court insist on a full hearing to give the employee an opportunity to explain his reasons if

the statute required a dismissal regardless of his explanation for refusing to answer?

If the scope of inquiry in the instant case was limited to a determination of whether he refused to answer the questions put to him by the committee, petitioner himself limited it. He was given the type of full hearing contemplated by the Slochower and Mass cases and section 1028.1 of the Government Code. Petitioner elected to remain silent.

Appellant argues that section 1028.1 of the Government Code, in its terms, by the use of the language:  
 179 "on any ground whatsoever" does not permit a reason or justification for a refusal to answer questions, and that it requires a dismissal if petitioner refuses to answer on any ground whatsoever. Counsel confuses the ground upon which petitioner refused to testify, in effect the basis of his refusal, with the reason why he refused to answer on that ground. Our Supreme Court has held that the terms of the statute do permit a reason or justification for refusing to answer and require a hearing for the purpose of permitting the employee to give it, and a determination of the employer that he was or was not justified.

Any argument that the county should have questioned petitioner about his reasons for invoking the privilege is specious. The record discloses that he was given every opportunity to explain if he wished to do so and "an opportunity to explain" does not imply that the county must elicit the information from the employee. Whether his explanation comes through query of the employer or the employee's own counsel would seem immaterial as long as the employee is given a full hearing in which he is afforded an opportunity to explain his reasons. The hearing is for the purpose of giving him the opportunity to explain. If he chooses to remain silent and not do so, he cannot now be heard to say he has been denied due process. If petitioner's hearing was limited in any way, it was limited by his own voluntary choice to remain silent. It is clear

180 that petitioner was afforded the hearing which due process requires under the pronouncements of the United States and California Supreme Courts in the Slochower and Mass cases and there is no basis for setting aside his dismissal.



As to whether the congressional committee was a duly authorized committee, petitioner cites *Watkins v. United States*, 354 U.S. 178, claiming that the authorizing resolution in the instant case was too broad in its terminology empowering the committee to investigate un-American and subversive activities. Although the court in the *Watkins* case commented upon the indefinite nature of the authorization it did not hold it unconstitutional. In any event the factual situation in the *Watkins* case and in the one at bar are not similar, for in the *Watkins* case appellant was prosecuted for contempt after refusing to answer certain questions as to past communist party membership of other persons. *Watkins* had offered to answer such questions pertaining to himself. In the present situation there was no vagueness in reference to the subject matter of the inquiry or its relation to the investigative powers of the committee. Petitioner was asked directly in regard to his own communist activities and refused to answer such inquiries.

181 Petitioner contends that he was discharged for invoking the privilege and that the implication of guilt it carries was responsible for his dismissal. As a matter of fact, petitioner was discharged because he "was guilty of insubordination and guilty of violating section 1028.1 of the Government Code of the State of California." Whatever implication petitioner wishes to attach to his having invoked the privilege is immaterial here. The statute heretofore held constitutional defines the refusal to answer as "insubordination," which authorizes a dismissal in the manner provided by law. It has been long established by the United States Supreme Court and the California Supreme Court that there is a correlation between loyalty and fitness and public employment. In *Board of Education v. Mass*, supra, at page 498, the court stated: "Loyalty on the part of public employees is essential to orderly and dependable government and is therefore relative to fitness for such employment." (*Steinmetz v. Cal. State Board of Education*, 44 Cal. 2d 816; *Pockman v. Leonard*, 39 Cal. 2d 676; *Christal v. Police Commission*, 33 Cal. App. 2d 565.) Section 1028.1 of the Government Code demands disclosure of information relative to such fitness as a reasonable condition for



retaining employment even though the disclosure may constitute self-incrimination in some cases. It is clear that both insubordination and disloyalty are factors of fitness. 182 The unquestioned basis for petitioner's dismissal was insubordination—a lack of cooperation. There appears in the record ample evidence of unfitness for county employment and a legal basis for discharge.

LILLIE, J.

The judgment is affirmed.

We concur:

WHITE, P. J.

FOURT, J.

183 [Clerk's Certificate to foregoing transcript omitted in printing.]

184 In the Supreme Court of the State of California

2d Civil No. 22680

THOMAS W. NELSON, PETITIONER AND APPELLANT

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD, AND ROGER W. JESSUP, MEMBERS THEREOF, CIVIL SERVICE COMMISSION OF LOS ANGELES COUNTY, HARRY ALBERT, PRESIDENT THEREOF, AND HAYDEN F. JONES AND WINSTON W. CROUCH, MEMBERS THEREOF, RESPONDENTS

*Appellant's petition for hearing*

*To the Chief Justice and the Associate Justices of the California Supreme Court:*

Petitioner and Appellant respectfully petitions that this cause be heard and determined by the Supreme Court for the following reasons:

185 1. Important questions under the United States Constitution and Article I, Section 13 of the California Constitution are presented which require consideration by this Court to the end that there be a uniformity of decision and a

settlement of the uncertainty regarding this vital aspect of Constitutional law.

2. The decision heretofore announced by this Court in the case of Board of Education v. Mass, 47 Cal. 2d 494, left undecided an important question of law under Government Code § 1028.1. That question should be decided in this case.

3. The constitutional issue presented in this case is an important one that is constantly recurring, can be expected to recur in the future and should be given a definitive ruling by this Court.<sup>1</sup>

This petition proffers only questions of law. The decision of the District Court of Appeal can only be an erroneous guide to trial courts if permitted to become final.

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## I. QUESTION PRESENTED

Is a county permanent civil service employee denied due process of law by reason of his discharge, as "insubordinate", solely and only because of his refusal, on proper constitutional ground; to answer questions before a Federal Congressional Committee having nothing to do with qualifications and fitness for employment?

## II. PROCEDURAL STATEMENT OF THE CASE

This is a petition for a hearing by this Court of the above entitled cause which is an appeal from a judgment denying a petition for a writ of mandate to reinstate petitioner to county employment.<sup>2</sup>

<sup>1</sup>The companion case in the court below (Globe v. County of Los Angeles, 2d Civil No. 22775; 163 ACA 668, Petition for Hearing in which is being filed concurrently herewith) and Callender v. County of San Diego, 161 ACA 529, demonstrate that the issue is not that of petitioner's alone. In the Callender case, this court denied a hearing, but it is reasonable to assume that the reason therefor was the presence of the laches issue in that case which was the sole basis for the District Court of Appeal's decision (161 ACA at 532). The issue in the instant case has never been determined by this Court.

<sup>2</sup>The record, exclusive of exhibits, is in two parts:

The Clerk's transcript (C.T.) and the Transcript of the Respondent Civil Service Commission (TR-CSC); the exhibits, pursuant to Rule 10, were transmitted to the Court below. Petitioner's entire personnel file was filed as an exhibit and the respective portions thereof have been designated in the exhibit by markings which correspond to references thereto contained in Appellant's opening brief.

Petitioner, a permanent Civil Service employee, was discharged on May 2, 1956 (C.T. 16). Subsequent to petitioner's discharge he appeared before the Civil Service Commission of Los Angeles County on June 11, 1956, and on August 187 9, 1956, a Civil Service Commission of Los Angeles County filed findings and conclusions that appellant was guilty of insubordination and guilty of violation of Section 1028.1 of the Government Code of the State of California and that petitioner's discharge was justified under the provisions of said Statute. (C.T. 3, 10, 11).

Appellant thereafter filed on November 9, 1956, a petition for writ of mandate in the Superior Court of the County of Los Angeles and judgment for respondent was entered on March 27, 1957 (C.T. 20). The trial Court entered a written opinion (C.T. 26) denying Petitioner's writ of mandate.

The District Court of Appeal, Second Appellate District, affirmed the trial Court's denial of the writ. The decision of the District Court of Appeal was filed on September 18, 1958. A copy of the opinion of that Court is attached hereto as Appendix "A". The opinion now appears at 163 ACA 679.

#### STATEMENT OF THE FACTS

There is no dispute as to the facts. No charge or allegation was made that petitioner's work was unsatisfactory.

On April 20, 1956, petitioner was served with a subpoena to appear before the Committee on Un-American Activities of the U.S. House of Representatives. Having been sworn as a witness, petitioner refused to answer a series of questions pertaining to his political opinion, associations, and alleged membership in the Communist Party (C.T. 17).

188 Petitioner refused to answer said questions, basing his refusal on the guarantees of the First and Fifth Amendments to the Constitution of the United States (C.T. 2).<sup>3</sup>

<sup>3</sup> The records of Los Angeles County contained in petitioner's personnel file indicate that on April 1, 1952, petitioner signed a County Loyalty Oath and that on said Loyalty Oath on September 7, 1954, the petitioner answered "No" to Question 15 on his application for the position of Medical Social Worker, which question read: "Are you now knowingly a member of the Communist Party?" (C.T. 3, 11).

As aforesaid petitioner appealed to respondent Civil Service Commission and at said hearing substantially the same facts as herein set out were stipulated to (Tr-C.S.C. 8—Exh. 3).

At said hearing respondents did not question petitioner nor make any inquiry whatsoever as to petitioner's opinions, political affiliations, membership, political or otherwise.

At no time has petitioner been asked by the County of Los Angeles Civil Service Commission, or any of the respondents, any of the questions or matters set forth in Government Code 1028.1.

### III. STATUTE INVOLVED

The Statute herein involved is Section 1028.1 of the Government Code of the State of California (Tr. 12, 13) (Set forth in full hereinafter as Appendix "B").

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#### ARGUMENT

I. PETITIONER'S DISCHARGE VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 13 OF THE CALIFORNIA CONSTITUTION; THE JUDGMENT UPHOLDING THE DISCHARGE IS CONTRARY TO *SLOCHOWER V. BOARD OF EDUCATION*, 350 U.S. 551 AND *BOARD OF EDUCATION V. MASS* 47 CAL. 2D 494

It is perfectly plain that petitioner was discharged solely and only because he refused to answer questions before a Congressional Committee, and that such questions had nothing to do with his fitness or qualifications for employment. Petitioner was not discharged for refusal to answer questions put to him by his employer; his employer asked him not a single question (C.T. 3, 11). The meaning of the *Slochower* decision showing that there is a fundamental constitutional due process distinction between the discharge of a public employee for refusal to answer questions put to him by his employer, having to do with fitness for employment, as distinguished from the discharge of the employee for refusal to answer questions on Constitutional grounds before a Congressional Investigating Committee having nothing to do with fitness for employment, is pointed out in petitioner's opening (pp. 13-18) and reply

(pp. 8-11) briefs. The argument is not repeated here but the Court's attention is respectfully invited thereto.

The recent decisions by the United States Supreme Court in *Lerner v. Casey*, — U.S. —; 78 S. Ct. 1311, and 190 *Beilan v. Board of Education*, — U.S.; 78 S. Ct. 1317<sup>\*</sup>

make it even more clear than before that the discharge sustained below violates due process of law and is contrary to the *Slochower* case.

In the *Lerner* case, the employee had refused to answer questions asked by his employer as to whether he was then a member of the Communist Party. For this refusal he was discharged. In sustaining the discharge the Supreme Court distinguished the situation in that case from that in *Slochower* (and, as we say, the situation in the case at bar). Thus the Court said (78 S. Ct. at 1316):

"\* \* \* (I)t seems clear that the discharge here in any event was unlike that in *Slochower v. Board of Higher Education*, \* \* \* Further, in *Slochower* such a claim had been asserted in a federal inquiry having nothing to do with the qualifications of persons for state employment and the (New York) Court (of Appeals) in its opinion carefully distinguished that situation from the one where, as here, a State is conducting an inquiry into fitness of its employees \* \* \*

Similarly, in *Beilan* the employee refused to answer 191 questions of his employer and was discharged. In sustaining the discharge, the Supreme Court said (78 S. Ct. at 1323):

"Our recent decisions in *Slochower v. Board of Education*, 350 U.S. 551 and *Konigsberg v. State Bar of California*, 353 U.S. 252, are distinguishable. In each we envisioned and distinguished the situation before us. In the *Slochower* case, at 558, the Court said:

"It is one thing for the city authorities themselves to inquire into *Slochower's* fitness, but quite another for his discharge to be based entirely on events occurring before a federal committee whose inquiry was announced as not directed at

<sup>\*</sup> These cases were decided subsequent to oral argument in the Court below and were referred to in a memorandum brief filed subsequent to oral argument in the Court below.

"the property, affairs, or government of the city, or \* \* \* official conduct of city employees." In this respect the present case differs materially from *Garner* (314 U.S. 716), where the city was attempting to elicit information necessary to determine the qualifications of its employees. Here, the Board has possessed the pertinent information for twelve years.<sup>5</sup> 192 and the questions which Professor Slochower refused to answer were admittedly asked for a purpose wholly unrelated to his college functions. On such a record the Board cannot claim that its action was part of a bona fide attempt to gain needed and relevant information."

It is thus evident that the discharge in the case at bar falls directly within the *Slochower* case, the meaning of which, if there were any doubt before, has been made crystal clear by the Supreme Court in the *Lerner* and *Beilan* cases.

Moreover, the emphasis by the United States Supreme Court on the distinction strongly suggests the appropriateness of this Court granting a hearing here to further consider the question in the light of this Court's decision in the *Mass* case. In the *Mass* case this Court reversed and remanded a lower Court decision which had sustained a discharge for refusal to answer questions before the same Congressional Committee involved in this case. The reason given by this Court was its understanding of the *Slochower* decision as requiring a meaningful hearing at which the reason for the employee's refusal to answer questions before the Congressional Committee is given consideration and found wanting before a discharge can be sustained.<sup>6</sup>

193 That the *Slochower* decision holds at least that, is clear. And that the instant case falls within this principle and within the *Mass* case is likewise clear. But, as the

<sup>5</sup> The same factual situation is present here. (Record of Interview of Mr. Nelson by Dorothy White, dated April 1, 1952; application of Mr. Nelson dated April 1, 1953; application of Mr. Nelson dated September 6, 1954; lettergram dated January 11, 1956, all in petitioner's personnel file.)

<sup>6</sup> This Court's language was (47 Cal. 2d at 499): "We understand the holding of the *Slochower* case to be that a public employee may be dismissed for invoking the privilege against self-incrimination only if, after a full hearing in which he is afforded an opportunity to explain his reasons for claiming the privilege, it is determined that his refusal to answer is sufficient under the circumstances to warrant dismissal." (Italics added.)



Lerner and Beilan decisions show, Slochower holds much more than that. The discharge must have to do with fitness for employment. And when the discharge is simply for refusal to answer questions before a Congressional Committee, having nothing to do with fitness for employment, due process and Slochower are violated.

This Court should grant a hearing to dispel the erroneous impression given by Mass that the California law is more narrow than the United States Supreme Court has said due process requires.

## II. THE HEARING AFFORDED PETITIONER WAS EXACTLY THAT TYPE OF HEARING PROSCRIBED IN SLOCHOWER AND MASS

There is no question that the sole reason for respondent's discharge was his refusal to answer questions before the Federal Committee (Exhibit "A"; C.T. 12, 13, 14). The findings and conclusions of the Civil Service Commission were to the same effect. (Ibid).

It is submitted that this is precisely the same position taken by the New York City Board of Education in the New  
194 York Courts in Slochower, (namely, that the duty to answer was a condition of public employment, the failure of which was ground for discharge). With this position the Supreme Courts both in Slochower and Mass do not concur.

The applicability of Slochower and Mass is particularly pointed up by the fact that on April 1, 1952, petitioner had signed the County and State loyalty oaths and that on September 7, 1954, he answered "No" to Question 15, "Are you now knowingly a member of the Communist Party?" on his application for the position of Medical Social Worker Director (Findings 3 and 4; C.T. 3, 11).

Yet, despite the signing of these loyalty oaths and the "No" answer to the question of Communist Party membership, respondents made no inquiry thereinto. Instead, as in Slochower and Mass, they seized upon the refusal to answer, upon the claim of privilege, before the federal committee and by virtue of Government Code 1028.1, turned such refusal into a conclusive presumption of guilt and discharged the petitioner.

The Court below, in answering this argument, and in fact

determining the entire case, concludes that the appellant herein was afforded the full hearing which due process requires under the cases of *Slochower* and *Mass* (Appendix "A"; 163 A.C.A. at 684). This in the face of respondents' position (C.T. 11) that the discharge was required by Government Code 1028.1 and in the face of the fact that there was no "determination" (see footnote 6, *supra*) as required by this Court's decision in *Mass*. The arguments as to the type of hearing afforded petitioner and the type of hearing required by *Slochower* and *Mass* is pointed out in petitioner's opening brief (pages 8-10) and petitioner's reply brief (pages 5-8). The argument is not repeated here but the Court's attention is respectfully invited thereto. And compare *Konigsberg v. State Bar of California*, 353 U.S. 252, holding that denial of admission to the Bar on grounds of failure to establish good moral character because of refusal to answer questions, similar to those here, put by the Committee of Bar Examiners, was a denial of due process. This court has granted a hearing in that case after the remand. (L.A. No. 23266.)

### III. PETITIONER WAS IN REALITY DISCHARGED FOR HIS REFUSAL TO ANSWER QUESTIONS BEFORE A CONGRESSIONAL COMMITTEE, WHERE PETITIONER ASSERTED THE PRIVILEGE AGAINST SELF-INCRIMINATION UNDER THE FIFTH AMENDMENT

The record (Exhibit "A", C.T. 12, 13, 14) clearly shows that petitioner was specifically discharged for "insubordination" under Government Code § 1028.1. Further, that the purported "insubordination" was predicated upon petitioner's refusal, on constitutional grounds, to answer questions propounded by a Congressional Investigative Committee. The fact that petitioner was given a "hearing" by his employer in which nothing mattered, save whether there was refusal to answer questions before the legislative committee does not satisfy the interdiction of *Slochower*; does not afford the individual "protection \* \* \* against arbitrary action," 350 U.S. 559. This, because the same lack of due process resulted as in *Slochower*, has occurred; petitioner was

discharged solely and only because of his refusal, upon a proper claim of privilege, to answer questions before a Federal Committee having nothing to do with qualifications and fitness for employment. "In practical effect the questions asked are taken as confessed and made the basis of discharge." *Slochower*, 350 U.S. at 558.

The Court below, in replying to petitioner's contention, states (Appendix "A": 163 A.C.A. at 686):

"Petitioner contends that he was discharged for invoking the privilege and that the implication of guilt it carries was responsible for his dismissal. As a matter of fact, petitioner was discharged because he was guilty of insubordination and guilty of violating Section 1028.1 of the Government Code of California. Whatever implication petitioner wishes to attach to his having invoked the privilege is immaterial here. The statute heretofore held constitutional defines the refusal to answer as 'insubordination', which authorizes a dismissal in the manner provided by law. It has long been established by the United States Supreme Court and the California Supreme Court that there is a correlation between loyalty and fitness and public employment. In *Board of Education v. Mass.* supra, at page 498, the court stated: 'Loyalty on the part of public employees is essential to orderly and dependable government' and is therefore relative to fitness for such employment.' (*Steinmetz v. Cal. Board of Education*, 44 Cal. 2d 816; *Pockman v. Leonard*, 39 Cal. 2d 676; *Christal v. Police Commission*, 33 Cal. App. 2d 565). Section 1028.1 of the Government Code demands disclosure of information relative to such fitness as a reasonable condition for retaining employment even though the disclosure may constitute self-incrimination in some cases. It is clear that both insubordination and disloyalty are factors of fitness. The unquestioned basis for petitioner's dismissal was insubordination—a lack of cooperation." • • •

<sup>1</sup> This same argument of "lack of cooperation" was strongly urged in the *Slochower* case (Brief of Appellee, pp. 12 and 32) and, as seen, rejected by the United States Supreme Court.

It is apparent therefore that the Court below has equated "loyalty" with "lack of cooperation" with a Congressional Committee and that it has equated both with "insubordination" to the employer in order to achieve a connection regarding fitness. While the Court below speaks of the unquestioned basis of dismissal as being insubordination, the Court's references to loyalty further require this Court to grant a hearing in order to clarify the constitutionality of a statute that determines "insubordination" upon a finding of fact that a public employee exercised a Constitutional right in refusing to answer questions before a Congressional Committee.

IV. A REQUIREMENT THAT A PUBLIC EMPLOYEE DISCHARGED FOR THE EXERCISE OF A CONSTITUTIONAL RIGHT HAS THE BURDEN OF PROOF THAT HE SHOULD NOT BE DISCHARGED IS A VIOLATION OF DUE PROCESS

Respondents, and the Court below, (Appendix "A"; 163 A.C.A. at 685) take the position that the burden was upon petitioner to prove that he should not be discharged for exercising a Constitutional right to questions placed to him by a Federal Congressional Committee.\* The recent United States Supreme Court decisions in *Speiser v. Randall*, 78 S. Ct. 1332, — U.S. —; and *First Unitarian Church v. County of Los Angeles*, 78 S. Ct. 1350, — U.S. —, teach that this inverts the order of things. When the State seeks to visit disabilities upon one for the exercise of a Constitutional right, the State must come forward "with sufficient proof and justify [the] inhibition" (78 S. Ct. 1332 at page 1343). In insisting that the employee come forward, respondents, as in the *Speiser* and *First Unitarian Church* cases, deny due process.

V. PETITIONER DID NOT VIOLATE GOVERNMENT CODE 1028.1 BECAUSE THE COMMITTEE WAS NOT A "DULY AUTHORIZED COMMITTEE OF THE CONGRESS"

Government Code 1028.1 requires that the Congressional Committee be a "duly authorized committee of the Congress."

\* The court below characterized the argument that respondents have the burden of proof as "specious." (163 A.C.A. at 685).

It is submitted that the House Committee on Un-American Activities before which the county employee here involved was summoned was not such a committee because its charter is unconstitutional within the free speech clause of the First Amendment and the due process clause of the Fifth Amendment to the United States Constitution.

The authority of the Committee as set out by the House of Representatives Resolution is set out in the margin.<sup>9</sup>

200 In *Watkins v. United States*, 354 U.S. 179, 201, the Supreme Court said that "the authorizing resolution \* \* \* is the committee's charter." In discussing the validity of this charter, the Court said (354 U.S. at 202, 203, 204):

"It would be difficult to imagine a less explicit authorizing resolution. Who can define the meaning of 'un-American'? What is that single, solitary 'principle of the form of government as guaranteed by our Constitution?' There is no need to dwell upon the language, however. At one time, perhaps, the resolution might have been read narrowly to confine the Committee to the subject of propaganda. The events that have transpired in the fifteen years before the interrogation of petitioner make such a construction impossible at this date.

"The members of the Committee have clearly demonstrated that they did not feel themselves restricted in any way to propaganda in the nar[\*]row sense of the word. Unquestionably the Committee conceived of its task in the grand view of its name. Un-American activities were its target, no matter how or where manifested \* \* \*

201 "Combining the language of the resolution with the construction it has been given, it is evident that the preliminary control of the Committee exercised by the House\* of Representatives is slight or non-existent. No one could

<sup>9</sup> H. Res. 5, 83d Cong., 1st Sess. (99 Cong. Rec. 18, 24):

"The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

reasonably deduce from the charter the kind of investigation that the Committee was directed to make \* \* \*

While it is true that in the Watkins case the Supreme Court did not, in so many words, hold the Charter of the Committee unconstitutional,<sup>10</sup> it is submitted that the reasoning of the Court and its language are persuasive authority to the effect that the Charter contains within itself the "vice of vagueness"<sup>11</sup> and is therefore unconstitutional because too broad and too vague under the Fifth Amendment.<sup>12</sup> It being the fact that propaganda (First Amendment freedoms) is the subject of the Committee's Charter, the vagueness thereof renders the Charter likewise defective under the First Amendment.<sup>13</sup>

202. Accordingly, there was no authority under Government Code 1028.1 for respondents to discharge petitioner. In any event, the question is so substantial as to warrant hearing by this Court.

#### CONCLUSION

The Petition for Hearing should be granted.

Respectfully submitted.

A. L. WIRIX,

FRED OKRAND,

WILLIAM T. PILLSBURY,

*Attorneys for Petitioner and Appellant.*

203.

#### CLERK'S NOTE

Appendix "A" to Appellant's petition for hearing—Opinion, Lillie, J. in the case of Nelson v. County of Los Angeles, No. 22680 omitted. Printed side page 171 quite.

<sup>10</sup> It went on to hold that the pertinency to any legislative purpose of the particular questions asked the defendant in that contempt case did not appear.

<sup>11</sup> The court cited (354 U.S. at 209) United States v. Josephson, 163 Fed. 2d 82, 88 (CA 2, 1947).

<sup>12</sup> Cf. United States v. Harriss, 347 U.S. 612; United States v. Cardiff, 344 U.S. 174; Winters v. New York, 333 U.S. 507; Musser v. Utah, 333 U.S. 95; Lanzetta v. New Jersey, 306 U.S. 451.

<sup>13</sup> Hague v. CIO, 307 U.S. 496; Winters v. New York, 333 U.S. 507; Sain v. New York, 334 U.S. 558; Staub v. City of Baxley, 355 U.S. 313, 2 L. ed. 2d 302.



Appendix "B" to Appellant's petition for hearing—State of California Statutes, Section 1028.1 of the Government Code omitted. Printed side page 304 supra.

204 In the Supreme Court of the State of California

2d Civil No. 22680

*Answer to petition for hearing*

November 5, 1958

{Title omitted.}

*To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:*

Thomas W. Nelson, the plaintiff and appellant, has filed his petition for hearing before this Honorable Court. The petition is based upon the following grounds:

1. Important questions under the United States Constitution and Article I, Section 13 of the California Constitution, are presented.

2. The decision in the case of Board of Education v. Mass, 47 Cal. 2d 494, left undecided an important question of 205 law under Government Code Section 1028.1.

3. The constitutional issue presented is an important one that can be expected to recur in the future.

The gist of the petition is, of course, that the opinion of the District Court of Appeal is erroneous. The defendants and respondents submit that the opinion of the District Court of Appeal is correct, that it properly and adequately disposed of all legal arguments advanced by the petitioner therein and herein, and that there is no merit to any of the grounds stated in the Petition for Hearing.

#### STATEMENT OF THE CASE

The opinion of the District Court of Appeal (Petition for Hearing, appendix A; 163 A.C.A. 679) accurately and completely sets forth the facts pertinent to the issue. Of particular importance is the fact the petitioner was given a hearing during

the course of which he was given the opportunity to explain his conduct. The question presented is whether petitioner was accorded due process of law prior to his dismissal as required by the Fourteenth Amendment to the United States Constitution and Article I, Section 13 of the California Constitution.

206 POINT I. THE HEARING BEFORE THE CIVIL SERVICE COMMISSION, IN FACT, AN INQUIRY "IN THE MANNER PROVIDED BY LAW" REGARDING PETITIONER'S FITNESS AND QUALIFICATION FOR PUBLIC EMPLOYMENT, FALLING WITHIN THE FRAMEWORK OF SLOCHOWER V. BOARD OF HIGHER EDUCATION, 350 U.S. 551, AND BOARD OF EDUCATION V. MASS, 47 CAL. 2D 494

1. A hearing called by an employer can, without violating due process, go into matters which occurred prior to the hearing as a basis for determination of fitness for holding public employment.

As announced by this Court in Board of Education v. Mass, 47 Cal. 2d 494, Slochower teaches that a public employee may be dismissed for invoking the Fifth Amendment privilege only if, after a full hearing on the matter, wherein he was given an opportunity to explain his reasons for claiming the privilege, it is determined that his refusal to answer is sufficient to warrant dismissal.

Petitioner would add a corollary lesson—if the refusals to answer were predicated on questions put to him by others than his employer and such questions, of themselves, were not directed to fitness for public employment, a discharge—

207 "IN THE MANNER PROVIDED BY LAW" REGARDING PETITIONER'S FITNESS AND QUALIFICATION FOR PUBLIC EMPLOYMENT, FALLING WITHIN THE FRAMEWORK OF SLOCHOWER V. BOARD OF HIGHER EDUCATION, 350 U.S. 551, AND BOARD OF EDUCATION V. MASS, 47 CAL. 2D 494.

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Petitioner would add a corollary lesson—if the refusals to answer were predicated on questions put to him by others than his employer and such questions, of themselves, were not directed to fitness for public employment, a 208 discharge based on such refusals violates due process. Not so.

It must first be remembered that it was not the fact of dismissal that was objectionable in Slochower. It was the fact that the dismissal was summary without a hearing. In the Slochower case, 353 U.S. at 559, the Court said:

"The State has broad powers in the selection and discharge of its employees, and it may be that proper inquiry would show Slochower's continued employment to be inconsistent with a real interest of the State. But there has been no such inquiry here. We hold that the summary dismissal of appellant violates due process of law."

Secondly, the very hearing which was afforded petitioner was the required inquiry by the employing authority to determine petitioner's fitness and qualification for continued public employment.

One of the duties imposed on petitioner as a public employee was the duty to answer certain specific questions involving a specific subject matter, if such questions were duly asked of him by a subcommittee of the Congress of the United States (Government Code Section 1028.1). This was not a duty in the abstract—it was an absolute duty directly imposed by the state on all public employees. Privilege permitted him to refuse to answer. He elected to refuse. 209

As Section 1028.1 defines any refusal to answer as "insubordination" authorizing dismissal in the manner provided by law, it was perfectly proper for the employing authority to hold a hearing to determine whether petitioner, by not perform-

ing a statutory duty, had demonstrated a lack of the necessary fitness and suitability for public employment. (Compare *Christal v. Police Commission*, 33 Cal. App. 2d 564, where it was held that a violation of a duty of employment would constitute a cause for dismissal, even in the absence of a specific rule requiring performance of the duty.)

Viewed in this light, *Lerner v. Casey*, 357 U.S. 468, 2 L. Ed. 2d 1423, 78 S. Ct. 1311, and *Beilan v. Board of Education*, 357 U.S. 399, 2 L. Ed. 2d 1414, 78 S. Ct. 1317, fall into place beside *Slochower*. In both *Lerner* and *Beilan*, two public employees refused to answer questions put to them by their employers regarding their Communist activities. Both employees were discharged. In this case, at a hearing called by his employer, petitioner was asked to explain his previous insubordinate conduct. The request was rebuffed. It is evident that the hearing afforded petitioner herein was essentially the same type of hearing afforded in *Lerner* and *Beilan*. The questions put to petitioner by the subcommittee were questions with which the employer itself legitimately could have asked of petitioner. (Cf. Section 1028.1 Government Code.) As the Court pointed out in the *Lerner* case (357 U.S. at 477):

"This Court pointed out in *Garner* that a government employee can be required upon pain of dismissal to respond to inquiry probing into matters relevant to his employment, and that present membership in the Communist Party is such a matter. See also *Beilan v. Board of Public Education*, *supra*. Certainly it is not a controlling constitutional distinction that New York, rather than impose on employees, as in *Garner* and *Beilan*, an absolute duty to respond to permissible inquiry upon threat of dismissal for refusal, has in these proceedings held that an employee lacking in candor to his governmental employer evidences doubt as to his trust and reliability."

In his concurring opinion to both *Lerner* and *Beilan*, Mr. Justice Frankfurter succinctly goes to the heart of the matter when he states (357 U.S. at 410):

"The services of two public employees have been terminated because of their refusals to answer questions relevant, or not

obviously irrelevant, to an inquiry by their supervisors  
 211 into their dependability. When these two employees  
 were discharged, they were not labeled 'disloyal'. They  
 were discharged because governmental authorities, like other  
 employers, sought to satisfy themselves of the dependability of  
 employees in relation to their duties. Accordingly, they made  
 inquiries that, it is not contradicted, could in and of them-  
 selves made. These inquiries were balked. The services of  
 the employees were therefore terminated."

2. Petitioner's own acts caused the hearing to be limited  
 to the fact of his refusal to testify before a Federal  
 subcommittee.

Petitioner's discharge hearing was directed at petitioner's  
 reasons for failing to discharge a statutory duty as well as es-  
 tablishing the fact of nonperformance of such a duty. Thus,  
 the scope of inquiry was not intended to be limited to a recital  
 of events occurring before a Federal subcommittee, but was to  
 be in a real sense an inquiry by supervisory authorities into  
 petitioner's fitness for public service. (Cf. *Slochower v. Board*  
*of Higher Education*, 350 U.S. 551.) If the hearing was, in  
 fact, limited: it was limited through the choice of petitioner:

As the Court below stated, at page 684:

212 "If the scope of inquiry in the instant case was lim-  
 ited to a determination of whether he refused to answer  
 the questions put to him by the committee, petitioner himself  
 limited it. He was given the type of full hearing contemplated  
 by the *Slochower* and *Mass* cases and Section 1028.1 of the  
 Government Code. Petitioner elected to remain silent."

The Court further stated, at page 685:

"The records disclose that he (petitioner) was given every  
 opportunity to explain if he wished to do so. . . . The hear-  
 ing is for the purpose of giving him an opportunity to explain.  
 If he chooses to remain silent and not do so, he cannot now  
 be heard to say he has been denied due process. If petitioner's  
 hearing was limited in any way, it was limited by his own  
 voluntary choice to remain silent."

POINT II. PETITIONER WAS DISCHARGED NOT FOR ASSERTING THE FIFTH AMENDMENT PRIVILEGE, BUT FOR AN ACT OF INSUBORDINATION UNDER GOVERNMENT CODE SECTION 1028.1

Petitioner seeks to twist facts to conform to his constitutional objection when he states that he was discharged  
213 "solely and only" because of his refusal to testify before a Federal committee. This contention was answered by the Court below when it stated at page 686:

"Whatever implication petitioner wishes to attach to his having invoked the privilege is immaterial here \* \* \* The unquestioned basis for petitioner's dismissal was insubordination—a lack of cooperation."

Compare, *Lerner v. Casey*, 357 U.S. 468, 2 L. Ed. 2d 1423, 78 S. Ct. 1311, where the court in distinguishing *Stochower* stated (357 U.S. at 476):

"\* \* \* it seems clear that the discharge here in any event was unlike that in *Slochower v. Board of Higher Education*, supra, in that as definitively interpreted by the Court of Appeals, it was not based on the fact that the employee had asserted Fifth Amendment rights."

POINT III. THE HEARING AFFORDED PETITIONER PRIOR TO HIS DISMISSAL MET ALL THE REQUIREMENTS OF DUE PROCESS

This Court, in *Board of Education v. Mass*, 47 Cal. 2d 494, stated the rule of due process applicable to this case. The summary discharge in *Slochower* was a denial of due  
214 process because "In practical effect the questions asked (by the Federal committee) are taken as confessed and made the basis of the discharge. No consideration is given to such factors as the subject matter of the questions, remoteness of the period to which they are directed, or justification for exercise of the privilege." (*Slochower*, 350 U.S. at 558.)

The hearing before the Civil Service Commission was contained within the shape of the mold created by *Slochower*. Section 1028.1 limited the scope of the duty to answer questions to certain questions involving only one subject matter. Further, the period to which such questions are to be directed is the present, not the indefinite past. Thus, two of the ran-



dom factors involved in Slochower are eliminated at once from this case. Additionally, petitioner was given every opportunity to justify his exercise of the privilege. Accordingly, the dictates of the Slochower and Mass cases were conformed with and petitioner had exactly the full scale hearing required by due process.

#### CONCLUSION

The opinion of the District Court of Appeals is not at odds with any decided case cited by petitioner, either in his 215 briefs or in his Petition for Hearing. The hearing afforded petitioner was fully in accord with the dictates of Slochower and Mass. Since petitioner was guilty of insubordination, of violation of a statutory duty involving his fitness for public employment, the fact that the duty involved answering questions put to him by persons other than his employer is not material. The fact is that petitioner was given every opportunity to explain his insubordinate acts and refused the opportunity. He cannot now say that through his own act the scope of the hearing was confined, thereby denying him due process. The petition for hearing should therefore be denied.

Respectfully submitted.

HAROLD W. KENNEDY,  
*County Counsel,*

WM. E. LAMOREAUX,  
*Assistant County Counsel,*

RONALD L. SCHNEIDER,  
*Deputy County Counsel,*

By \_\_\_\_\_,  
*Attorneys for Respondents and Appellants.*

216 In the Supreme Court of the State of California,  
in Bank

2d District, Division 1, Civ. No. 22680

NELSON

v.

COUNTY OF LOS ANGELES ET AL.

*Order denying hearing after judgment by District Court of  
Appeal*

Filed November 13, 1958

Order Due November 17, 1958

Appellant's petition for hearing denied.

Gibson, C. J., Carter, J., and Traynor, J. are of the opinion  
that the petition should be granted.

GIBSON,  
*Chief Justice.*

[File endorsement omitted.]

217 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669480

ARTHUR GLOBE, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS AN-  
GELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF,  
HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD  
AND ROGER W. JESSUP, MEMBERS THEREOF; AND WILLIAM  
A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF  
CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS

Date: April 17, 1956, Los Angeles, California.

218

Mr. TAVENNER. Mr. Arthur Globe.

Mr. MOULDER. Hold up your right hand and be sworn.

Do you solemnly swear that the testimony which you are about to give before the committee will be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. GLOBE. I do.

*Testimony of Arthur Globe, accompanied by his counsel,  
Esther Shandler*

Mr. GLOBE. I would like to request the committee to  
219 keep these photographers away from me, if you don't mind.

Mr. JACKSON. I object, Mr. Chairman.

The press has every right to operate. It is one of the freedoms of the First Amendment.

Mr. TAVENNER. What is your name, please, sir?

Mr. GLOBE. Arthur Globe.

Mr. TAVENNER. Will counsel accompanying the witness please identify herself for the record.

Mrs. SHANDLER. Esther Shandler.

Mr. TAVENNER. When and where were you born, Mr. Globe?

Mr. GLOBE. Chicago, Illinois.

Mr. TAVENNER. When?

Mr. GLOBE. February 26, 1918.

Mr. TAVENNER. Where do you now reside?

Mr. GLOBE. In Los Angeles.

Mr. TAVENNER. How long have you lived in Los Angeles?

Mr. GLOBE. Something over 30 years.

Mr. TAVENNER. Will you tell the committee, please, what your formal educational training has been.

Mr. GLOBE. I took a Bachelor of Arts degree at the University of California in Los Angeles, in 1942, and, after my army service of 40 months, I returned to the University of Southern California, in graduate work, and completed 65 units in clinical psychology.

Mr. TAVENNER. What was the period of your military service?  
220

Mr. GLOBE. From September of 1942 until January of 1946.

Mr. TAVENNER. Was your additional graduate work after your return from service?

Mr. GLOBE. I beg your pardon. I didn't hear the question.

Mr. TAVENNER. I say was your additional graduate training after you returned from service?

Mr. GLOBE. That is correct.

Mr. TAVENNER. Will you state again, please, what that was.

Mr. GLOBE. Three to four years of study in the field of clinical psychology and related fields.

Mr. TAVENNER. You completed your course of training then about what date? Your formal training.

Mr. GLOBE. I didn't quite complete my formal training. I took the course work.

Mr. TAVENNER. What was the approximate date when you finished your formal training?

Mr. GLOBE. It extended over a period of approximately four to four and a-half years.

Mr. TAVENNER. And that would be at what time that you terminated your work? I have asked that three times now.

Mr. GLOBE. You asked the actual day, hour and minute?

Mr. TAVENNER. No; I didn't ask that.

Mr. GLOBE. I can give it to you as the best of my recollection: from 1946 to 1950 approximately.

221 Mr. TAVENNER. That is the first time you have done that.

What has been your profession since that time?

Mr. GLOBE. My profession has been that of a psychologist and that of a social worker, both areas concerned with mental health.

Mr. TAVENNER. How have you been employed in your work as a social worker?

(The witness confers with his counsel.)

Mr. GLOBE. Would you be more specific, please?

Mr. TAVENNER. What has been your employment as a social worker since 1950?

Mr. GLOBE. I find the questioning as to my employment a little difficult to accept under the circumstances. I can't quite see how my employment, my employment experience, present or past, can be the concern of the committee.

I do my work and I do it as well as I can, and that is the situation.

I don't understand the line of your questioning, Mr. Tavenner.

Mr. SCHERER. Mr. Chairman, I ask that you direct the witness to answer Mr. Tavenner's question with reference to his employment.

(The witness confers with his counsel.)

Mr. JACKSON. It is a matter of proper identification.

Mr. MOULDER. At the request of members of the 222 committee, the witness is directed to answer the question.

(The witness confers with his counsel.)

Mr. GLOBE. I have been employed as a social worker, or at least in social agencies twice. The present employment is that of a social worker, and the past employment was also—In 1950 I worked as a social worker in a social agency.

Mr. TAVENNER. Where?

Mr. GLOBE. Where? In Los Angeles.

Mr. SCHERER. By whom are you presently employed?

Mr. GLOBE. By the County of Los Angeles.

Mr. SCHERER. As a social worker?

Mr. GLOBE. That is correct.

Mr. TAVENNER. Where did you attend school between 1946 and 1950?

Mr. GLOBE. I answered that question already.

Mr. TAVENNER. You said you attended school, but you didn't state where, according to my recollection.

Mr. GLOBE. University of Southern California.

Mr. TAVENNER. That was the period that you were taking graduate work, I believe. Is that correct?

Mr. GLOBE. That is correct.

Mr. TAVENNER. Were you familiar with an organization in that school composed largely of graduate students known as the John Reid Club of the Communist Party?

Mr. GLOBE. My familiarity or lack of familiarity with 223 any organization that might exist in the country today is entirely my own business, and termed under the Constitution of the United States.

This is a matter of personal knowledge. I don't think that this committee has any right to inquire into my personal

knowledge in this or any other respect since they cannot legislate what I do nor what I do not know, or what I intend to now.

Mr. SCHERER. I ask that you direct the witness to answer the question.

Mr. MOULDER. The witness is directed to answer the question.

As I understand it—

Pardon me.

Mr. GLOBE. Yes, sir.

Mr. MOULDER. You are directed to answer.

Mr. GLOBE. Finding the question completely out of line as far as my rights as a citizen are concerned, I refuse to answer this question under the First and Fifth Amendments of the Constitution of the United States.

Mr. TAVENNER. Were you a member of the John Reid Club of the Communist Party while in attendance at the university?

Mr. GLOBE. This question is even more objectionable than the first one for the same reasons I previously stated, and I object to it, and I refuse to answer on the same grounds.

224 Mr. TAVENNER. Were you acquainted with any of the activities of a group of the Communist Party known as the John Reid Club in the Communist Party?

Mr. GLOBE. I refuse to answer on the same grounds.

Mr. TAVENNER. Did you observe the Communist Party activities since 1950 of any persons known to you to be members of the John Reid Club of the Communist Party while you were at the university?

Mr. GLOBE. I feel, Mr. Tavenner, if you want information about names, people and anything else that you might be concerned with, I suggest that you get one of your trained seals up here and ask them.

I refuse to answer this.

Anyone or any associations I may have had in the past or expect to have in the future are entirely my own.

I refuse to answer this question as it is an invasion of my rights, invasion of the rights of all the American citizens.

I refuse to answer on the basis of the First and Fifth Amendments, both.



Mr. TAVENNER. Are you a member of the Communist Party now?

Mr. GLOBE. I refuse to answer this question, as previously stated for previous reasons, and on the same grounds.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

Mr. MOULDER. Mr. Doyle?

Mr. DOYLE. No questions.

225 Mr. MOULDER. Any questions, Mr. Jackson?

Mr. JACKSON. No questions.

Mr. MOULDER. Mr. Scherer?

Mr. SCHERER. Did this witness say he served in the armed forces of the United States?

Mr. GLOBE. I certainly did.

Mr. TAVENNER. Yes.

Mr. SCHERER. When you were a member of the armed forces of the United States, Witness, were you a member of the Communist Party at that time?

Mr. GLOBE. I refuse to answer: First and Fifth Amendments. You have no right to ask.

Mr. SCHERER. I have no further questions.

Mr. MOULDER. I have one question.

Do you have any knowledge or information of the activities of any person in connection with subversive, communistic activities?

(The witness confers with his counsel.)

Mr. SCHERER. It is not funny, Witness, at all.

Mr. GLOBE. It is a rather difficult question to answer since it contains so many elements that are implied and have not been established since I have been on the stand.

As far as I am concerned, these implications have not been established in the country at all. The whole idea——

Mr. SCHERER. You say there has been no establishment in this country of subversive activities when our atomic secrets were stolen and now rest in the archives of the Kremlin because of subversives in government?

(The witness confers with his counsel.)

Mr. GLOBE. I would be glad to discuss this or any other question you might ask me——

Mr. Scherer is it?

Mr. SCHERER. When you are not under oath.

Mr. GLOBE. When I am not on the stand under the circumstances of this committee; where I would be glad to discuss it under oath if you too were under oath, sir.

Under the circumstances I feel that I am, since I am a target for what seems to be and has been proved to be quite unprincipled attacks that are aimed at maligning and destroying a person's working ability, I refuse to answer this question on the same grounds as previously.

Mr. MOULDER. Very well.

Is that all?

Mr. TAVENNER. Yes.

Mr. MOULDER. The witness is excused.

Claim your witness fees with the deputy clerk who sits at the desk immediately behind the witness chair.

The committee will stand in recess for a period of 5 minutes.

(Whereupon, a short recess was taken, Representatives Moulder, Doyle, Jackson and Scherer being present.)

227 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669480

ARTHUR GLOBE, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS

*Petition for writ of mandate*

The clerk is ordered to file this petition without prior service other than which already may have been made.

Nov. 9, 1956.

JOHN J. FORD, Judge.

## I

Petitioner is a resident of the County of Los Angeles, State of California, and a citizen of the United States. He was employed by the County of Los Angeles, Department of Charities, as a Social Worker, on March 28, 1955, and continued in said employment until May 2, 1956 when petitioner was discharged from his employment, as will be more particularly set forth hereinbelow. During the entire period of his employment, petitioner performed the duties of his employment satisfactorily; his duties were those of Social Case Worker.

## II

The respondent County of Los Angeles is a body  
228 corporate and politic, and a political subdivision of the State of California. The respondent Board of Supervisors is the governing agency of the County of Los Angeles; Burton W. Chace is, and at all times mentioned herein has been, a member of and chairman of said Board; and the respondents Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup are, as they have at all times herein been, members of said Board; respondent William A. Barr is, and at all times herein was, Superintendent of Charities, Department of Charities, County of Los Angeles, and as such has at all times herein had, and now has, authority to employ and to discharge employees of the County of Los Angeles in said Department of Charities.

## III

On April 6, 1956, the petitioner was served with a subpoena to appear before a Committee of the United States Congress, the Committee on Un-American Activities of the United States House of Representatives, at Los Angeles, California, on April 20, 1956; at said time and place the petitioner was placed under oath, and asked a series of questions by Committee Members and by Counsel for said Committee; the petitioner answered some of said questions, and with respect to other questions, pertaining to political opinion and association, including membership in the Communist Party, the petitioner refused to answer said questions, basing his refusal upon the

guarantees of the First and Fifth Amendments to the Constitution of the United States.

#### IV

On May 2, 1956, the petitioner was discharged from his employment aforesaid by the County of Los Angeles, by William A. Barr, respondent, as Superintendent of Charities, Department of Charities of said County; the sole reason for said discharge was the refusal of the petitioner to answer a question propounded to him by said Committee on Un-American Activities on the occasion aforesaid, pertaining to his political affiliation, namely as to membership in the Communist party; and the refusal of the petitioner to answer said question based upon the guarantees of the First and Fifth Amendments to the Constitution of the United States.

Thereupon, the petitioner requested and was granted a hearing pertaining to said discharge, before the Civil Service Commission of Los Angeles County. Petitioner appeared before said Commission for the purpose of a hearing on May 29, 1956; thereupon the said Commission denied a hearing to the petitioner.

#### V

As of the date of the discharge of the petitioner, he was classified as a Social Worker, temporary; he had in fact successfully completed two six-month periods of evaluation, both of which were satisfactory, and thereby rendering petitioner eligible for permanent status as a Social Worker; on March 24, 1956 petitioner took the Civil Service examination for Social Worker receiving a grade of 89.49%, or more than passing or satisfactory; and petitioner, thereupon, became eligible for appointment as a Social Worker, permanent probationary.

#### VI

In 1955, the petitioner took the State loyalty oath, as required by the Levering Act.

## VII

At no time subsequent to the appearance of the petitioner before said United States Congressional Committee on April 20, 1956, did the respondents or any of them make inquiry of the petitioner pertaining to his opinions, political or otherwise, or affiliations or membership, political or otherwise; nor did any of said respondents make any inquiry of the petitioner pertaining to any alleged or claimed membership in the Communist Party.

## VIII

The discharge of the petitioner, as aforesaid, was and is illegal and void, and abridges the constitutional rights of 230 the petitioner as guaranteed to him by the Constitution of the United States, and by the Constitution of the State of California, in the following respects and particulars:

1. The discharge was and is arbitrary and unreasonable.
2. The discharge violates the rights of the petitioner under the Constitution of the United States, in that
  - a. With respect to the First and 14th Amendments, it abridges freedom of thought, freedom of speech and freedom of assembly as guaranteed by said First Amendment;
  - b. With respect to the Fifth Amendment, in that it abridges his right to be free from being a witness against himself;
  - c. With further respect to the 14th Amendment, it abridges his privileges and immunities as a citizen of the United States.
3. The discharge violates the rights of the petitioner under the Constitution of California, in that
  - a. It abridges his right to free speech, as guaranteed by Article I, Section 9, and his right to free assembly as guaranteed by Section 10 of said Article;
  - b. It violates his immunity from being a witness against himself as provided for by Article I, Section 13.
4. The questions propounded to him by said United States Congressional Committee, were not within the scope of any lawful authority of said Committee and were not pertinent to any lawful authority thereof.

## IX

Petitioner has suffered great and irreparable harm by being terminated from his employment and deprived of his means of livelihood in his specialized field of endeavor, and petitioner has no plain, speedy and adequate remedy at law, or otherwise than by this Petition for Writ of Mandate.

231 Wherefore petitioner prays:

1. A Writ of Mandate issue from this Honorable Court directing respondents County of Los Angeles Board of Supervisors of Los Angeles County, and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup, Chairman and members of said Board respectively and William A. Barr, as Superintendent of Charities, Department of Charities, County of Los Angeles, to reinstate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge;

2. That an Alternative Writ issue from this Honorable Court directing respondents County of Los Angeles, Board of Supervisors of Los Angeles County, and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup, Chairman and members of said Board, respectively, and William A. Barr, as Superintendent of Charities, Department of Charities, County of Los Angeles, to re-instate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge; and ordering said respondents to show cause, at a time and place to be set by the Court, as to why a permanent writ of mandate should not issue directing respondents County of Los Angeles, Board of Supervisors of Los Angeles County and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup, Chairman and members of said Board, respectively, and William A. Barr, as Superintendent of Charities, Department of Charities, County of Los Angeles, to reinstate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge;

3. For costs of suit;



• 4. For such other and further relief as petitioner may be entitled to.

A. L. WIRIN.

WILLIAM T. PILLSBURY.

A. L. WIRIN.

By A. L. Wirin.

*Attorneys for Petitioner.*

231a (Verification.)

232 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669480

ARTHUR GLOBE, PETITIONER:

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES  
COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT  
C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER  
W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR,  
SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARI-  
TIES, COUNTY OF LOS ANGELES, RESPONDENTS

*Alternative writ of mandate*

Filed November 9, 1956

[File endorsement omitted.]

*The People of the State of California to County of Los  
Angeles; Board of Supervisors, Los Angeles County, Bur-  
ton W. Chace, Chairman Thereof, Herbert C. Legg,  
Kenneth Hahn, John Anson Ford, and Roger W. Jessup,  
Members Thereof; and William A. Barr, Superintendent  
of Charities, Department of Charities, County of Los  
Angeles, Respondents Above Named:*

Whereas, it manifestly appears to us by the verified petition  
of Arthur Globe, that notwithstanding there be no cause for  
the discharge of petitioner as an employee of the County of

233 Los Angeles; the respondents have discharged said petitioner from his position, and that there is not a plain, speedy, or adequate remedy at law.

Therefore, we do command you, County of Los Angeles, Board of Supervisors of Los Angeles County, and Burton W. Chace, Herbert C. Legg, Kenneth Hahn, John Anson Ford and Roger W. Jessup, Chairman and Members of said Board, respectively, and William A. Barr, as Superintendent of Charities, Department of Charities, County of Los Angeles, to reinstate the petitioner to his employment as of the date of the discharge of the petitioner, and to reimburse the petitioner for loss of compensation because of said discharge;

Or That You Show Cause before this Court, the Superior Court of Los Angeles County at Los Angeles, California in Department 34 thereof on the 23d day of November 1956, at the hour of 9:30 A.M., why you have not done so.

HAROLD J. OSTLY,

*Clerk,*

By J. E. ROSE,

*Deputy.*

Let the within writ issue.

Dated: November 9, 1956.

John J. Ford,

JOHN J. FORD,

*Judge, Superior Court.*

172 NELSON AND GLOBE VS. COUNTY OF LOS ANGELES, ET AL.

234 In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 669480

ARTHUR GLOBE, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES  
COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT  
C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER  
W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SU-  
PERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES,  
COUNTY OF LOS ANGELES, RESPONDENTS

*Respondents return to the alternative writ of mandate; answer  
to the petition for said writ, and points and authorities*

Filed November 29, 1956

[File endorsement omitted.]

Comes Now, the respondents above named and for their re-  
turn to the Alternative Writ of Mandate issued herein answer  
the Petition for said Writ as follows:

## I

Answering Paragraph I of said Petition, respondents allege  
that the petitioner, Arthur Globe, is a resident of the County  
of Los Angeles and is a citizen of the United States. That he  
was first employed on March 28, 1955 as a non-eligible, tem-  
porary employee in the position of social worker in the Depart-  
ment of Charities and on May 1, 1955 he became a temporary,  
eligible employee in said position and continued as such until  
May 2, 1956, on which date he was discharged from his employ-  
ment. Except as specifically admitted herein, respondents  
deny all of the allegations therein contained.

235

## II

Answering Paragraph III of said Petition, respondents admit  
that on April 6, 1956, petitioner was served with a subpoena

to appear before the Committee on Un-American Activities, House of Representatives, at Los Angeles, California, on April 20, 1956. That petitioner appeared before the Committee at said time and place pursuant to said subpoena and was placed under oath and asked a series of questions by committee members and counsel for said committee.

Further answering Paragraph III, respondents allege that with reference to certain questions asked of the petitioner, the following occurred at said hearing:

“Mr. TAVENNER. What has been your employment as a social worker since 1950?

Mr. GLOBE. I find the questioning as to my employment a little difficult to accept under the circumstances. I can't quite see how my employment, my employment experience, present or past, can be the concern of the committee.

I do my work and I do it as well as I can, and that is the situation.

I don't understand the line of your questioning, Mr. Tavenner.

Mr. SCHERER. Mr. Chairman, I ask that you direct the witness to answer Mr. Tavenner's question with reference to his employment.

(The witness confers with his counsel.)

Mr. JACKSON. It is a matter of proper identification.

Mr. MOULDER. At the request of members of the committee, the witness is directed to answer the question.

(The witness confers with his counsel.)

Mr. GLOBE. I have been employed as a social worker, or at least in social agencies twice. The present employment  
236 is that of a social worker, and the past employment was also—In 1950 I worked as a social worker in a social agency. \* \* \*

Mr. TAVENNER. Were you familiar with an organization in that school composed largely of graduate students known as the John Reid Club of the Communist Party?

Mr. GLOBE. My familiarity or lack of familiarity with any organization that might exist in the country today is entirely my own business, and termed under the Constitution of the United States.

This is a matter of personal knowledge. I don't think that this committee has any right to inquire into my personal knowledge in this or any other respect since they cannot legislate what I do nor what I do not know, or what I intend to know.

Mr. SCHERER. I ask that you direct the witness to answer the question.

Mr. MOULDER. The witness is directed to answer the question.

As I understand it—

Pardon me.

Mr. GLOBE. Yes, sir.

Mr. MOULDER. You are directed to answer.

Mr. GLOBE. Finding the question completely out of line as far as my rights as a citizen are concerned, I refuse to answer this question under the First and Fifth Amendments of the Constitution of the United States.

Mr. TAVENNER. Were you a member of the John Reid Club of the Communist Party while in attendance at the university?

Mr. GLOBE. This question is even more objectionable than the first one for the same reasons I previously stated, and I object to it, and I refuse to answer on the same grounds.

Mr. TAVENNER. Were you acquainted with any of the  
237 activities of a group of the Communist Party known as the John Reid Club in the Communist Party?

Mr. GLOBE. I refuse to answer on the same grounds.

Mr. TAVENNER. Did you observe the Communist Party activities since 1950 of any persons known to you to be members of the John Reid Club of the Communist Party while you were at the university?

Mr. GLOBE. I feel, Mr. Tavenner, if you want information about names, people and anything else that you might be concerned with, I suggest that you get one of your trained seals up here and ask them.

I refuse to answer this.

Anyone or any associations I may have had in the past or expect to have in the future are entirely my own.

I refuse to answer this question as it is an invasion of my rights, invasion of the rights of all the American citizens.

I refuse to answer on the basis of the First and Fifth Amendments, both.

Mr. TAVENNER. Are you a member of the Communist Party now?

Mr. GLOBE. I refuse to answer this question, as previously stated for previous reasons, and on the same grounds. \* \* \*

Mr. SCHERER. When you were a member of the armed forces of the United States, Witness, were you a member of the Communist Party at that time?

Mr. GLOBE. I refuse to answer: First and Fifth Amendments. You have no right to ask.

Mr. SCHERER. I have no further questions.

Mr. MOTLBER. I have one question.

Do you have any knowledge or information of the activities of any person in connection with subversive, communistic activities?

238 (The witness confers with his counsel.)

Mr. SCHERER. It's not funny, Witness, at all.

Mr. GLOBE. It is a rather difficult question to answer since it contains so many elements that are implicit and have not been established since I have been on the stand.

As far as I am concerned, these implications have not been established in the country at all. The whole idea——

Mr. SCHERER. You say that has been no establishment in this country of subversive activities when our atomic secrets were stolen and now rest in the archives of the Kremlin because of subversives in government?

(The witness confers with his counsel.)

Mr. GLOBE. I would be glad to discuss this or any other question you might ask me——

Mr. Scherer is it?

Mr. SCHERER. When you are not under oath.

Mr. GLOBE. When I am not on the stand under the circumstances of this committee; where I would be glad to discuss it under oath if you too were under oath, sir.

Under the circumstances I feel that I am, since I am a target for what seems to be and has been proved to be quite unprincipled attacks that are aimed at maligning and destroying a



person's working ability, I refuse to answer this question on the same ground as previously. \* \* \*

#### IV

Answering Paragraph IV of said Petition, respondents allege that on May 2, 1956, respondent, William A. Barr, as Superintendent of Charities, Department of Charities, Los Angeles County, discharged petitioner from his position for his actions before said committee, for his refusal to cooperate with said committee and his refusal to answer the questions propounded to him as hereinabove set forth. That a copy of  
239 said letter of dismissal, marked Exhibit "A" is attached hereto, made a part hereof and specifically referred to herein. That the petitioner requested a hearing pertaining to his discharge, before the Civil Service Commission of Los Angeles County and that he appeared before said Commission on May 29, 1956, at which time said Civil Service Commission denied petitioner a hearing upon the ground that a temporary employee is not entitled to a hearing upon a discharge. Except as specifically admitted herein, respondents deny all of the allegations therein contained.

#### V

Answering Paragraph V of said Petition, respondents admit that as of the date of petitioner's discharge, he was classified as a social worker, temporary and had completed two, six-month periods in said position. Further answering said paragraph, respondents allege that at said time he was on an eligible list for a position as social worker. That on March 24, 1956, he took a Civil Service Examination for social worker and received a grade on said examination of 89.94 per cent; that said grade was more than a passing grade and as a result of said examination, petitioner was placed upon an eligible list for appointment as a social worker. Except as specifically admitted, respondents deny all of the allegations therein contained.

#### VI

Answering Paragraphs VI and VIII of said Petition, respondents admit all of the allegations therein contained.

VII

Answering Paragraph VIII of said Petition, respondents deny all of the allegations therein contained and in that connection allege that the discharge of petitioner was a legal and valid discharge and pursuant to the provisions of Section 1028.1 of the Government Code of the State of California.

Wherefore, respondents pray that the Peremptory Writ of Mandate be denied and the Alternative Writ of Mandate discharged, and for their costs herein incurred.

Respectfully submitted.

HAROLD W. KENNEDY,  
County Counsel,

WM. E. LAMOREAUX,  
Assistant County Counsel,

and FRED R. METHENY,  
Deputy County Counsel.

By FRED R. METHENY,  
Attorneys for Respondents.

241 Exhibit "A" to Respondents return, etc.

MAY 2, 1956.

Mr. ARTHUR GLOBE,  
460½ N. GARDNER STREET,  
LOS ANGELES 36, CALIFORNIA.

DEAR SIR: You are hereby notified that effective of this date you are discharged from your position of Social Case worker, Bureau of Public Assistance, Department of Charities of the County of Los Angeles, without further notice. This action is based upon the grounds that you have been guilty of insubordination and of violation of Section 1028.1 of the Government Code of the State of California which provides:

"It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the state or local agency by which such employee is employed, to appear before such governing body, or a committee or subcommittee thereof, or by a duly authorized committee of the Congress of the United States, or of the Legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a ques-

tion or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to: :

(a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States of *of* any state.

(b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States of *of* any State.

(c) Past knowing membership any *any* time since September 10, 1948, in any organization which, to the knowledge of such employee, during the time of the employee's membership advocated the forceful or violent overthrow of the Government of the United States of *of* any state.

242 (d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since September 10, 1948.

Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law.

The specific facts which are the basis for the above grounds of your discharge are that you were duly and regularly subpoenaed to appear before the United States House of Representatives Committee on Un-American Activities, a duly authorized committee of the Congress of the United States; that on April 20, 1956, you did appear before said committee; that you were put under oath and were asked a series of questions by Counsel of said committee, which questions directly related to the above listed categories, including the following questions:

"Are you a member of the Communist Party now?"; that you refused to answer under oath the above question propounded to you by the Counsel of the United States House of Representatives Committee on Un-American Activities.

On April 6, 1956, you were personally served a copy of the Board Order of February 19, 1952, concerning the possible ap-

pearance of certain employees before the House Un-American Activities Committee. This Board Order related to your duty to testify as a County employee when appearing before said committee.

You may within ten days of service upon you of this letter file a written answer to these charges with this office sending a copy thereof to the County Civil Service Commission, 501 North Main Street, Los Angeles 12, California.

You may, if you so desire, within ten days of service upon you of this letter request a hearing on these charges before said Civil Service Commission.

Yours very truly,

(S) William A. Barr,  
WILLIAM A. BARR,  
*Superintendent of Charities.*

WAB:AK:ba

cc: Civil Serv. Comm.; County Counsel, Payroll Division  
Head, Personnel Mgr., Char.

243 Proof of service (omitted in printing).

244 MEMORANDUM FOR COUNSEL

Omitted. Printed side page 148, supra.

250 In the Superior Court of the State of California in and  
for the County of Los Angeles

No. 669-480

*Findings of fact and conclusions of law*

May 28, 1957

[Title omitted.]

[File endorsement omitted.]

This proceeding came on regularly for trial on December 10, 1956, in Department 34 of the above entitled Court, Honorable John J. Ford, Judge Presiding, A. L. Wirin, Fred Okrand and William T. Pillsbury appearing for the petitioner, and Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Assistant County Counsel, and Fred B. Metheny, Deputy

County Counsel, appearing for the respondents, and the Court having considered the evidence and heard the arguments of the counsel; and the matter having been submitted, now makes its Findings of Fact and Conclusions of Law as follows:

The Court finds:

251

I

It is true that petitioner was employed on March 28, 1955, as a non-eligible, temporary employee in the position of social worker in the Department of Charities and on May 1, 1955 he became a temporary, eligible employee in said position and continued as such until May 2, 1956, on which date he was discharged from his employment.

II

It is true that petitioner was served with a subpoena on April 6, 1956, to appear before the Committee on Un-American Activities of the United States House of Representatives, at Los Angeles, California, on April 20, 1956; that petitioner appeared before the committee at said time and place and was placed under oath and refused to answer questions asked of petitioner by counsel for said Committee; said questions which petitioner refused to answer pertained to past and present knowing membership in the Communist Party; that the petitioner refused to answer said questions basing his refusal upon the First and Fifth Amendments to the Constitution of the United States.

III

It is true that on May 2, 1956, the petitioner was discharged from his employment aforesaid by the County of Los Angeles, by William A. Barr, Respondent, as Superintendent of Charities, Department of Charities of said County; that the sole reason for his discharge was his refusal to answer questions propounded to petitioner pertaining to past and present knowing membership in the Communist Party; and that petitioner's refusal to answer said questions was based upon the First and Fifth Amendments to the Constitution of the United States.

#### IV

It is true that petitioner requested a hearing pertaining to said discharge, before the Civil Service Commission of 252 Los Angeles; that petitioner appeared before said Commission for the purpose of a hearing on May 29, 1956, and that at said time and place the said Commission refused to grant petitioner a hearing; that no other hearing was given to petitioner by respondents.

From the aforesaid findings of fact the Court concludes as a matter of law:

#### I

That Section 1028.1 of the Government Code of the State of California provides for the dismissal of an employee "In the manner provided by law" and that before an employee may be found guilty of insubordination under the aforementioned section of the Government Code of the State of California, there must be a full hearing granted to said employee in order that a determination be made as to whether or not his reasons for invoking the Constitutional privilege against self-incrimination are sufficient.

#### II

That an employee of the County of Los Angeles may not be discharged from his employment under Section 1028.1 of the Government Code without being afforded a full hearing and inquiry as to the sufficiency of the employee's reasons for invoking the privilege against self-incrimination and of invoking protections afforded the employee under the United States Constitution, which hearing shall embrace and include any matter germane to the charges filed against him, all for the purpose of determining whether the dismissal from employment under the aforementioned Code Section is warranted.

#### III

That the refusal of Los Angeles County to grant an employee a full hearing as aforesaid constitutes a denial of due process of law and is an arbitrary discrimination which is prohibited by the United States Constitution.



253.

IV

That a Peremptory Writ of Mandate should be granted directing the respondents County of Los Angeles and the Board of Supervisors thereof to provide petitioner a hearing on the petitioner's discharge in the manner provided by law.

Let judgment be entered accordingly.

Dated: May 28, 1957.

JOHN J. FORD.

*Judge of the Superior Court.*

254 In the Superior Court of the State of California in and for the County of Los Angeles

No. 669-480.

ARTHUR GLOBE, PETITIONER

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, BURTON W. CHACE, CHAIRMAN THEREOF, HERBERT C. LEGG, KENNETH HAHN, JOHN ANSON FORD AND ROGER W. JESSUP, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS

*Judgment*

Dated May 28, 1957 and entered May 29, 1957

[File endorsement omitted.]

This proceeding having come on regularly for trial on December 10, 1956, in Department 34 of the above entitled Court, Honorable John J. Ford, Judge Presiding, A. L. Wirin, Fred Okrand and William T. Pillsbury appearing for the petitioner, and Harold W. Kennedy, County Counsel, Wm. E. Lamoreaux, Assistant County Counsel, and Fred R. Metheny, Deputy County Counsel, appearing for the respondents, and the Court having considered the evidence and heard the arguments of the counsel, and the matter having been submitted, and the Court having made and filed its Findings of Facts

and Conclusions of Law, and having ordered judgment to be entered in accordance therewith.

255 Now, therefore, it is hereby ordered, adjudged and decreed that a Peremptory Writ of Mandate should be granted ordering the respondents County of Los Angeles and the Board of Supervisors thereof to grant to petitioner a full hearing as to the sufficiency of the petitioner employee's reasons for invoking the privilege against self-incrimination and of invoking the protections afforded the employee under the United States Constitution; which hearing shall include and embrace any matter germane to the charges filed against him, for the purpose of determining whether the dismissal of petitioner from employment under Section 1028.1 of the Government Code of the State of California was warranted.

Petitioner shall recover his costs in this proceeding as against said respondents county of Los Angeles and the Board of Supervisors thereof in the amount of \$.....

Dated this 28th day of May 1957.

JOHN J. FORD.

*Judge of the Superior Court.*

256 In the Superior Court of the State of California in and for the County of Los Angeles

No. 669480

*Notice of Appeal*

Filed June 26, 1957

*To the Clerk of the above-entitled court:*

[Title omitted.]

[File endorsement omitted.]

You will please take notice that the Respondents of the above-entitled action hereby appeal to the District Court of Appeal of the State of California, Second Appellate District from the judgment therein entered by the court in this action

on the 29th day of May, 1957, in favor of the Petitioner and against the Respondents and from the whole thereof.

Dated this 26th day of June, 1957.

HAROLD W. KENNEDY,

*County Counsel,*

WILLIAM E. LAMOREAUX,

*Assistant County Counsel,*

FRED R. METHANY,

*Deputy County Counsel,*

By Fred R. Metheny,

FRED R. METHENY,

*Attorneys for Respondents.*

257 In the Superior Court of the State of California in and for the County of Los Angeles

No. 669480

*Respondents' notice and request for clerk's transcript on appeal*

Filed June 26, 1957

To the Clerk of the Above-Entitled Court:

[File endorsement omitted.]

[Title omitted.]

Please Take Notice that the Respondents County of Los Angeles et al., having filed a Notice of Appeal herein, do hereby request that the Clerk of the above-entitled court prepare a transcript in accordance with the Rules on Appeal of the State of California in force and effect:

1. All Pleadings filed by Petitioner and Respondents;
2. The Judgment and Memorandum for Counsel;
3. Notice of Entry of Judgment;
4. Notice of Appeal, together with all exhibits either offered or admitted into evidence by the Respondents or the Petitioner;

- 258 5. Alternative Writ of Mandate herein; and  
6. Findings of Fact and Conclusions of Law.

Dated this 26th day of June, 1957.

HAROLD W. KENNEDY,

*County Counsel,*

WILLIAM E. LANGOREAUX,

*Assistant County Counsel and*

FRED R. METHENY,

*Deputy County Counsel,*

By Fred R. Metheny,

FRED R. METHENY,

*Attorneys for Respondents.*

- 259 [Clerk's certificates to foregoing transcript omitted  
in printing.]

- 261 In the District Court of Appeals of the State of California,  
Second Appellate District, Division One

[Civ. No. 2275. Second Dist., Div. One. Sept. 18, 1958.]

ARTHUR GLOBE, RESPONDENT

v.

COUNTY OF LOS ANGELES ET AL., APPELLANTS

[1] PUBLIC EMPLOYEES—DUTY TO DISCLOSE INFORMATION.—Loyalty on the part of a public employee is essential to the order and peaceful operation of government and is relative to fitness for such employment; therefore, such an employee may be required to disclose certain information relative to fitness and loyalty as a reasonable condition for retaining public employment although the disclosures may in some cases constitute self-incrimination.

[2] ID.—DISCHARGE.—A temporary public employee who refused to answer questions asked by a legislative committee on the ground of self-incrimination was discharged "in the manner provided by law" under Gov. Code, § 1028.1, where he was summarily dismissed and was refused a hearing before a county civil service commission, since the county charter and the civil service rules under which the employee was hired provided that

a temporary employee was not entitled to a hearing on his dismissal, except in case of fraud or discrimination because of political or religious opinions, racial extraction or organized labor membership.

[3] *Id.*—DISCHARGE.—A public employee who was dismissed after refusing to answer questions asked by a legislative committee on the ground of self-incrimination was not discharged because of the implication of guilt that invoking his constitutional privilege may have carried, but was dismissed because he was guilty of insubordination and violating Gov. Code, § 1028.1.

[4] *Id.*—DISCHARGE.—A temporary public employee who, after refusing to answer questions asked by a legislative committee on the ground of self-incrimination, was summarily dismissed and refused a hearing before a county civil service commission was not thereby denied due process, since such temporary employee had no vested right to public employment and even if he did, due process does not always require a hearing but only that the rudiments of fair play be observed. In addition, government employ is not properly protected by the due process clause.

[2] See Cal. Jur. 2d, Public Officers, § 239; Am. Jur., Public Officers, § 181 et seq.

[3] Assertion of immunity as ground for removing or discharging public employee, note, 44 A.L.R. 2d 789.

McK. Dig. References: [1] Public Employees, § 6; [2-4] Public Employees, § 12.

262      Appeal from a judgment of the Superior Court of Los Angeles County. John J. Ford, Judge. Reversed.

Proceeding in mandamus to compel a county and its officers to grant a temporary county employee a full hearing in respect to his discharge from county employment. Judgment granting writ, reversed.

Harold W. Kennedy, County Counsel, William E. Lamo-reaux, Assistant County Counsel, and Fred R. Metheny, Deputy County Counsel, for Appellants.

A. L. Wirin, Fred Okrand and William T. Pillsbury for Respondent.

*Opinion*

September 18, 1958

LILLIE, J.—This is an appeal by the county of Los Angeles, the board of supervisors and the superintendent of charities from a judgment in a mandamus proceeding ordering them to grant petitioner Arthur Globe, a temporary county employee, a full hearing in respect to his discharge from county employment.

On March 28, 1955, Arthur Globe was employed on a "non-eligible temporary" basis as a social worker in the Department of Charities. On May 1, 1955, he became a "temporary, eligible" employee in the same position continuing as such until May 2, 1956, the date of his discharge from county service. On April 20, 1956, petitioner, having been duly subpoenaed, appeared before a Subcommittee on Un-American Activities of the United States House of Representatives, and after having been sworn refused to answer certain questions relating to past and present knowing membership in the Communist Party, his familiarity with and membership in a certain "John Reid Club of the Communist Party," his acquaintance with the activities of any persons known to him to be members of that club and whether during his service in the armed forces he had been, or was then, a member of the Communist Party. Petitioner refused to answer such questions, basing his refusal on the First Amendment of the United States Constitution and on a claim of privilege against self-incrimination under the Fifth Amendment.

Shortly thereafter petitioner was summarily discharged from county employment, his conduct in refusing to answer such questions being deemed insubordination and a violation of section 1028.1 of the Government Code of the State of California. This section provides in part as follows:

263 "It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the state or local agency by which such employee is employed, to appear before such governing body, or a committee or subcommittee thereof, or by a duly authorized committee of the Congress of the United States or of the Legislature of this



State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

\* \* \* \* \*

"(d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since September 19, 1948.

"Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of *insubordination* and guilty of *violating* this section and shall be suspended and dismissed from his employment *in the manner provided by law.*" [Emphasis added.]

Petitioner requested a hearing before the Los Angeles County Civil Service Commission concerning his discharge and appeared before it on May 29, 1956. The commission ruled that petitioner was a temporary employee and therefore, pursuant to sections 19.07 and 19.09 of the county civil service rules was not entitled to such a hearing as a matter of right.

Thereafter petitioner instituted the present mandamus proceeding seeking reinstatement as a county employee and reimbursement for loss of compensation. The trial court found that regardless of his temporary status he was entitled to a hearing before the commission to explain his reasons for refusing to answer the questions propounded and that appellants' refusal to give him a full hearing constituted a denial of due process. The trial court granted a peremptory writ of mandate directing that a hearing be granted on petitioner's discharge.

The issue before us is whether the county civil service commission is required to hold a hearing on the discharge of a temporary county employee for a violation of section 1028.1 of the Government Code.

Appellants contend that in petitioner's discharge from county employment without a hearing there was no

264 arbitrary act of discrimination which denied him due process. With this position we agree.

Authority to prescribe regulations for the admission of persons into civil service and their discharge from employment has been vested by the Charter of the County of Los Angeles in the Civil Service Commission. The rules of the commission have the same force and effect as charter provisions as long as they are applied in the scope contemplated by the charter. (Campbell v. City of Los Angeles, 47 Cal. App. 2d 310 [117 P. 2d 901]; Bruce v. Civil Service Board, 6 Cal. App. 2d 633 [45 P. 2d 419].)

Section 34 of article IX of the Charter of the County of Los Angeles provides in pertinent part as follows:

"The Commission shall prescribe, amend and enforce rules for the classified service, which shall have the force and effect of law; \* \* \*

"The rules shall provide \* \* \*

"(7) For a period of probation not to exceed six months before appointment or promotion is made complete, during which period a probationer may be discharged or reduced with the consent of the Commission. \* \* \*

"(9) For temporary employment of persons on the eligible list. \* \* \*

Section 19.07 of the civil service rules provides:

"An employee who has not yet completed his first probationary period may be discharged or reduced in accordance with Rule 19.09 by the appointing power by written notice, served on the employee and a copy filed with the Commission, specifying the grounds and the particular facts on which the discharge or reduction is based. Such an employee shall be entitled to answer, explain, or deny, the charges in writing within ten business days *but shall not be entitled to a hearing, except in case of fraud or of discrimination because of political or religious opinions, racial extraction, or organized labor membership.*" [Emphasis added.]

Section 19.09 states in pertinent part:

"If the Commission has consented prior to the filing of an answer by the employee and such answer alleges fraud, or discrimination as above stated, and requests a hearing, the

Commission shall immediately set aside its consent. The hearing shall be limited to the question of fraud or discrimination. After such hearing the Commission may consent to the discharge or may order such employee reinstated; 265 and unless such order otherwise provides, it shall be effective as of the date of the discharge or reduction.

"No consent need be secured to the discharged or reduction of a temporary or recurrent employee."

It is undisputed that petitioner Globe had "not yet completed his first probationary period" and was employed only on a temporary, eligible basis. The record discloses that a written notice was served upon him specifying the reason for his discharge—insubordination and a violation of section 1028.1 of the Government Code.

The right to discharge a public employee for refusal to testify under the circumstances here involved, the fact that his refusal constituted insubordination, and the conclusion that either disloyalty or insubordination establishes unfitness have been determined by prior judicial decisions. (*Board of Education v. Mass.*, 47 Cal. 2d 494 [304 P. 2d 1015]; *Steinmetz v. California State Board of Education*, 44 Cal. 2d 816 [285 P. 2d 617].) Petitioner at no time has denied that he refused to testify before the House Subcommittee on Un-American Activities and answer questions relating to his past or present knowing membership in the Communist Party. At no time has the cause of petitioner's discharge been alleged to be anything but insubordination and a violation of section 1028.1, nor indeed under the record before us could it be. No question of opinion or political belief was involved. Under these circumstances no hearing on discharge was provided or permitted a temporary employee under the civil service rules, nor was the consent of the commission necessary. The Los Angeles County Charter (§ 34, art. IX) and the rules of the Los Angeles County Civil Service Commission (§§ 19.07 and 19.09) control on the issue whether a hearing had to be granted on discharge of an employee in petitioner's class. They require none. On the applicability of the charter and rules the court stated in *Cronin v. Civil Service Com.*, 71 Cal. App. 633, at pages 641-642 [236 P. 339]: "For this court

now to hold that a hearing should be had by the Commission before a principal could discharge a deputy when none had been provided for in the charter, would be for this court to usurp the functions of the freeholders and to change their work in a material respect. This, it has neither the right nor the inclination to do. We must accept the charter as framed by the freeholders, and not attempt to enlarge its scope under the guise of judicial interpretation. Neither subdivision 13 of said section 34 of the charter nor rule XI, as prescribed by the Commission, provides for any hearing upon the charges preferred against a deputy before the principal may discharge him. All that is required by the charter and the rules of the Commission is that the officer discharging the deputy shall serve upon him, a reasonable time before his discharge, and file with the Commission a statement of the reasons for the discharge.

Section 1028.1 of the Government Code, and similar legislation, providing that a public employee who fails or refuses on any ground whatsoever to answer questions propounded to him by a legislative committee relating to past and present knowing membership in the Communist Party shall be guilty of insubordination and of violating the section and shall be "dismissed from his employment in the manner provided by law," have been held constitutional. (*Board of Education v. Mass.* 47 Cal. 2d 494 [304 P. 2d 1015]; *Steinmetz v. California State Board of Education*, 44 Cal. 2d 816 [285 P. 2d 617].) Both the Legislature and the courts have declared that the Communist Party is a continuing conspiracy against our Government (*Gov. Code*, § 1027.5; *Ed. Code*, § 12600; *Black v. Cutter Laboratories*, 43 Cal. 2d 788 [278 P. 2d 905]), and without doubt the state has the power and authority to require county employees to testify on such subjects as a condition to continued employment. (*Adler v. Board of Education of New York*, 342 U.S. 485 [72 S. Ct. 380, 96 L. Ed. 517, 27 A.L.R. 2d 472].)

[1] Loyalty on the part of county employees is essential to the order and peaceful operation of government and is relative to fitness for such employment. Therefore a government employee may be required to disclose certain information relative to fitness and loyalty as a reasonable condition for retaining

public employment even though the disclosures may in some cases constitute self-incrimination. (Board of Education v. Mass. supra; 47 Cal. 2d 494; Steinmetz v. California State Board of Education, supra, 44 Cal. 2d 816.) [2] Although by the terms of section 1028.1 of the Government Code petitioner must be discharged "in the manner provided by law," under the authority (charter and civil service rules) by which he was hired and held his employment, he as a temporary employee was not entitled to a hearing upon discharge. Therefore, as applied to him section 1028.1 does not require a hearing and a county temporary employee who is summarily discharged is discharged in the "manner provided by law." By refusing him a hearing it is clear that no right was taken from petitioner which he otherwise would have had, or been entitled to.

267 In demanding a hearing regardless of his employment status, petitioner is in effect asking the court to equalize the rights of all civil service employees whether they be temporary, probationary or permanent. To do so would lose sight of the entire philosophy of civil service in government and destroy the distinction between the various classifications. The basic reasoning behind the "stepladder" classifications in civil service is the necessity for a trial period for both employee and employer. It is during this time the employer formulates its opinion of the suitability, capability, ability to work with others, stability and loyalty of the employee, and determines whether he will make a satisfactory permanent worker. During this period the employee, too, has the opportunity to determine whether he likes the work involved, conditions, personnel, etc., and wishes to remain. He may quit at any time. The employer also has the right to discharge him. As stated in *Parsons v. County of Los Angeles*, 37 Cal. App. 2d 666, at page 672 [99 P. 2d 1079]: "It is a well-settled rule of law that where there are no restrictive provisions the power of the appointment carries with it the power of removal. (Fee v. Fitts, supra, [108 Cal. App. 551 (291 P. 889)].) The legislature has ample authority to determine the manner in which city employees may be removed and it has undertaken to fix the procedure to be followed. Subject to the limitations expressly imposed, the proper executive officers may discharge."



(See also *Neuwald v. Brock*, 12 Cal. 2d 662 [86 P. 2d 1047], *Snelling v. Civil Service Board*, 90 Cal. App. 2d 865 [204 P. 2d 358]). It is only after the employee has completed his probationary period and remains to become "permanent" that certain employment rights become available to him.

To hold on the one hand that under ordinary circumstances a temporary employee can be constitutionally validly discharged without a hearing and on the other that, if he is discharged for insubordination and a violation of section 1028.1, he must be given a full hearing is to allow privilege and destroy equality. To grant him a hearing because of his refusal to answer questions with reference to his membership in a communist organization is to grant him a status which the ordinary employee in this same classification does not have. Petitioner can demand no greater degree of privilege than any other temporary county civil service employee regardless of any implied question of loyalty or disloyalty.

Petitioner contends that appellants make the same argument rejected in *Housing Authority of the City of Los Angeles v. Cordova*, 130 Cal. App. 2d Supp. 883 [270 P. 2d 215]. The housing authority contended that because the lease provided it could terminate a tenancy upon 10 days' notice it needed to give no reason for termination and could terminate if tenants refused to sign the "Housing Loyalty Oath." There the court simply held that the right to public housing could not be based on the signing of a loyalty oath and a statutory right to public housing having been created this right could not be taken away without due process of law. This is quite another situation than the one at bar in which no statutory right exists in any event. It seems to this court that housing subversives does not present the same serious problem as hiring them.

Petitioner, defending the judgment of the lower court, relies heavily on *Slochower v. Board of Higher Education of N.Y. City*, 350 U.S. 551 [76 S. Ct. 637, 100 L. Ed. 692], and *Board of Education v. Mass.*, 47 Cal. 2d 494 [304 P. 2d 1015], urging that under these authorities he is entitled to a full and complete hearing and a determination of whether his reasons for invoking the privilege are sufficient.



The petitioner, a temporary employee, does not fall within the framework of due process laid down in either of these two cases. In *Slochower v. Board of Higher Education of N.Y. City*, 350 U.S. 551 [76 S. Ct. 637, 100 L. Ed. 692], Professor Slochower, a permanent employee entitled to tenure under the state law, was summarily discharged by the board under a New York City charter provision. A New York statute gave a procedural right to a hearing before discharge to persons in the class of Slochower. The Supreme Court concluded there was a violation of due process in summarily dismissing him. However, the court also held that one does not have a constitutional right to government employment and "he must comply with reasonable, lawful and non-discriminatory terms laid down by the proper authorities." (*Slochower v. Board of Higher Education of N.Y. City*, supra, p. 555.)

Thereafter, the case of *Board of Education v. Mass*, 47 Cal. 2d 494 [304 P. 2d 1015] involving the constitutionality of section 12604 of the Education Code was decided. Mass, an instructor at City College in San Francisco, had appeared before a subcommittee of the House of Representatives and refused to answer questions asked of him regarding his membership in the Communist Party. He was later suspended without a hearing before the board of education for his refusal to testify. The court held that Mass was entitled to a 269 hearing. Here again the employee enjoyed a specific statutory right to a hearing before discharge.

An analysis of both opinions discloses that the court determined the rights of employment and discharge under conditions of tenure, or permanency, wherein by statute the employee was entitled to a hearing, as compared with the temporary status of petitioner herein and his total lack of any right of hearing under the charter and civil service rules. The rights involved under the Slochower and Mass cases were of statutory origin and in each the statutory safeguards had been built into certain rights of tenure which required there could be no discharge in the manner provided by law until such time as a full and complete hearing had been granted. In the instant case there is no statutory right for a hearing prior to the discharge of petitioner, a temporary employee. Holding a

temporary status only he had no basic right to either a hearing or to county employment and whatever his rights were must be measured by the county charter and the civil service rules adopted thereunder. The temporary status enjoyed by him distinguishes him from the permanency in the Slochower and Mass cases.

[3] Petitioner contends that he was discharged for invoking his constitutional privilege and that the implication of guilt it carries was responsible for his discharge. Actually he was discharged because he was guilty of insubordination and of violating section 1028.1 of the Government Code. Whatever implication he wishes to attach to his having invoked the privilege is immaterial here. Section 1028.1 heretofore held constitutional defines the refusal to answer as "insubordination" which authorizes dismissal.

[4] Petitioner also claims that all he did was to exercise a constitutional privilege in refusing to answer the questions and that his discharge without a hearing therefore was a violation of due process.

At the outset a temporary employee has no vested right to county employment and may therefore be discharged summarily. (Bailey v. Richardson, 182 F. 2d 46 [86 App. D.C. 248], aff'd, 341 U.S. 918 [71 S. Ct. 669, 95 L. Ed. 1352]; Friedman v. Schwellenbach, 159 F. 2d 22 [81 App. D.C. 365], cert. den.) Although involving federal civil service, these cases are persuasive here. The court in the Bailey case recognized that Congress had provided the President of the United States with authority to prescribe regulations for the admission of persons into civil service and for their discharge. The court held 270 that a summary discharge of a probational appointee was proper and without constitutional objection. At page 58, it stated: "Due process of law is not applicable unless one is being deprived of something to which he has a right." The holding in the Friedman case is similar to that in the Bailey case. The facts therein relative to status are practically identical with those in the instant case. The dismissal without a hearing was upheld. In the case of Parker v. Lester, 227 F. 2d 708, on the issue of due process the court stated at page 716: "When it is proposed to take from a citizen

through administrative proceedings some right which he otherwise would have, it has always been held that the constitutional requirement is that he shall be afforded notice and an opportunity to be heard."

We fail to see what it is to which petitioner "has a right" for which a hearing must be given. Because of his temporary employment status he is, at the most, only an applicant for a permanent position. Of interest in this connection is the analogous situation expressed in *Bailey v. Richardson*, *supra*, 182 F. 2d 46, at page 55: "If her status was merely that of an applicant for appointment, as we think it was, her nonappointment involved no procedural constitutional rights. Obviously, an applicant for office has no constitutional right to a hearing or a specification of the reasons why he is not appointed."

Furthermore, due process does not always require a hearing even where vested rights are involved. Defining "due process" the United States Supreme Court, speaking through Mr. Justice Frankfurter, stated in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, at page 162 [71 S. Ct. 624, 95 L. Ed. 817]: "Due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process. \* \* \* The Court has responded to the infinite variety and perplexity of the tasks of government by recognizing that what is unfair in one situation may be fair in another. \* \* \* Whether the ex parte procedure to which the petitioners were subjected duly observed 'the rudiments of fair play,' (citing cases) cannot, therefore, be tested by mere generalities or sentiments abstractly appealing. The precise nature of the interest that has been adversely affected, the manner in which this is done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of  
271 and good accomplished—these are some of the considerations that must enter into the judicial judgment."

We are satisfied petitioner in the case at bar has been treated fairly at all stages of his employment and dismissal.

As to the applicability of the Fourteenth Amendment of the United States Constitution, or article I, section 13 of the California Constitution, the court in *Bailey v. Richardson*, supra, said at page 57: "The due process clause provides: 'No person shall \* \* \* be deprived of life, liberty, or property, without due process of law; \* \* \*'. It has been held repeatedly and consistently that Government employ is not 'property' and that in this particular it is not a contract. We are unable to perceive how it could be held to be 'liberty'. Certainly, it is not 'life'. So much that is clear would seem to dispose of the point. In terms the due process clause does not apply to the holding of a Government office." Referring to the First and Sixth Amendment infringements, the court stated at page 60: "The situation of the Government employee is not different in this respect from that of private employees. A newspaper editor has a constitutional right to speak and write as he pleases. But the Constitution does not guarantee him a place in the columns of a publisher with whose political views he does not agree," and again at page 61: "No one denies Miss Bailey the right to any political activity or affiliation she may choose. What is denied her is Government employ. The argument upon the clear and present danger rule, therefore, must be that Miss Bailey has a right to Government employ unless her presence there would constitute a clear and present danger. There simply is no such right. To state the proposition is to demonstrate its untenability."

In the instant case it is clear that the controlling provision of the charter and civil service rules permit no hearing prior to discharge of those in Globe's class. There is no reason why petitioner should be permitted to claim and secure any extraordinary rights merely because he was insubordinate and refused to answer questions about his communist affiliations. He had no basic right to county employment in the first instance. No hearing as a matter of either constitutional or statutory right had to be granted an employee in Globe's position.

Untenable is petitioner's contention that the Congressional Committee was not a duly authorized committee for the reason that the authorizing resolution was too broad and vague in its terminology which empowered the committee to investigate un-American and subversive activities and all other questions in relation thereto, without adequately or at all limiting or defining such terms. This point is predicated upon the case of *Watkins v. United States*, 354 U.S. 178, 201 [77 S. Ct. 1173, 1 L. Ed. 2d 1273], in which the court commented upon the indefinite nature of the authorization but did not hold the authorizing resolution unconstitutional. The facts in the *Watkins* case and in the instant controversy are entirely dissimilar, for in the *Watkins* case appellant was prosecuted for contempt after refusing to answer certain questions as to past Communist Party membership of other persons. *Watkins* had offered to answer any such questions pertaining to himself. In the present situation, certainly, there was no vagueness in reference to the subject matter of the inquiry or its relation to the investigative powers of the committee;—the employee was asked directly in regard to his own communistic activities and refused to answer such inquiries.

For the foregoing reasons, judgment is reversed.

White, P. J., and Fourn, J., concurred.

[1] See Cal. Jur. 2d, *Public Officers*, § 236; *Am. Jur.*, *Public Officers*, § 247 et seq.

McK. Dig. References: [1, 2] *Public Employees*, § 6; [3, 4] *Public Employees*, § 4; [5, 6] *Public Employees*, § 12.

273 [Clerk's Certificate to foregoing paper omitted in printing.]

2nd Civil No. 22775

In the Supreme Court of the State of California

ARTHUR GLOBE, PETITIONER AND RESPONDENT

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS, LOS ANGELES COUNTY, JOHN ANSON FORD, CHAIRMAN THEREOF, BURTON W. CHACE, KENNETH HAHN, HERBERT C. LEGG AND WARREN M. DORN, MEMBERS THEREOF; AND WILLIAM A. BARR, SUPERINTENDENT OF CHARITIES, DEPARTMENT OF CHARITIES, COUNTY OF LOS ANGELES, RESPONDENTS AND APPELLANTS

PETITIONER'S AND RESPONDENT'S PETITION FOR HEARING

*To the Chief Justice and the Associate Justices of the California Supreme Court:*

Petitioner and Respondent respectfully petitions that this cause be heard and determined by the Supreme Court for the following reasons:

1. Important questions under the United States Constitution and Article I, Section 13 of the California Constitution are presented which require consideration by this  
275 Court to the end that there be a uniformity of decision and a settlement of the uncertainty regarding this vital aspect of Constitutional law.

2. The decision heretofore announced by this Court in the case of Board of Education v. Mass, 47 Cal. 2d 494, left undecided an important question of law under Government Code, Section 1028.1. That question should be decided in this case.

3. The constitutional issue presented in this case is an important one that is constantly recurring, can be expected to recur in the future and should be given a definitive ruling by this Court.<sup>1</sup>

<sup>1</sup> The companion case in the court below (Nelson v. County of Los Angeles, 2nd Civil No. 22680, 162 A.C.A. 679, Petition for Hearing in which is being filed concurrently herewith) and Callender v. County of San Diego, 161 A.C.A. 529, demonstrate that the issue is not that of petitioner's alone. In the Callender case, this court denied a hearing, but it is reasonable to assume that the reason therefor was the presence of the laches issue in that case which was the sole basis for the District Court of Appeal's decision (161 A.C.A. at 532). The issue in the instant case has never been determined by this Court.



~~This petition proffers only questions of law. The decision of the District Court of Appeal can only be an erroneous guide to trial Courts if permitted to become final.~~

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## I. QUESTION PRESENTED

Is a county temporary employee denied due process of law by reason of his discharge, without a hearing, as "insubordinate", solely and only because of his refusal, on proper constitutional ground, to answer questions before a Federal Committee having nothing to do with qualifications and fitness for employment?

## II. PROCEDURAL STATEMENT OF THE CASE

This is a petition for a hearing by this Court of the above entitled cause which is an appeal in a mandamus proceeding wherein the trial court issued its mandate ordering the Defendants to grant petitioner, a temporary County employee, a hearing in respect to his discharge from County employment, which judgment was reversed by the Court below.

Petitioner, a temporary employee in the position of social worker in the Department of Charities, County of Los Angeles, was discharged from employment on May 2, 1956. Petitioner thereafter requested a hearing before the Los Angeles County

Civil Service Commission regarding his discharge, and  
277 on May 29, 1956 petitioner was denied a hearing on the ground he was not entitled thereto. (C.T. 3, 14).

Petitioner thereafter filed on November 9, 1956 a petition for a writ of mandate in the Superior Court, County of Los Angeles and judgment for petitioner was entered on March 27, 1957 (C.T. 20). The trial court entered a written opinion (C.T. 26) ordering the respondents to hold a hearing before the Civil Service Commission regarding petitioner's reasons for refusing to answer questions propounded by the Congressional Committee and determining that respondents' refusal to grant petitioner a full hearing constituted a denial of due process.

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\*The record, exclusive of exhibits, is in two parts:

The Clerk's transcript (C.T.) and the Transcript of the respondent Civil Service Commission (Tr-C.S.C.); the exhibits pursuant to Rule 10, were transmitted to the Court below.

The District Court of Appeal, 2nd Appellate District, reversed the trial Court's granting of the peremptory writ of mandate.<sup>3</sup> The decision of the District Court of Appeal was filed on September 18, 1958. A copy of the opinion of that Court is attached hereto as Appendix "A". The opinion now appears at 163 A.C.A. 668.

#### STATEMENT OF THE FACTS

There is no dispute of fact. No charge was made nor any question raised as to petitioner's satisfactory performance of his duties.

278 Petitioner was a Civil Service employee of respondent County of Los Angeles in the position of Social Worker, Temporary, in the Department of Charities. He was employed on March 28, 1955 and discharged on May 2, 1956. (C.T. 1)

On April 6, 1956 petitioner was served with a subpoena requiring his appearance before the Committee on Un-American Activities of the United States House of Representatives. Having been sworn as a witness, petitioner answered some questions but refused to answer questions pertaining to political opinion, association, and membership in the Communist Party. (C.T. 2.)

Petitioner refused to answer said questions, basing his refusal on the guarantees of the First and Fifth Amendments to the Constitution of the United States (C.T. 2). Petitioner requested a hearing relative to his discharge and on May 29, 1956, the Los Angeles County Civil Service Commission ruled that petitioner, as a temporary employee, was not entitled to a hearing. (C.T. 3, 14.)

At no time had petitioner been asked by the County of Los Angeles Civil Service Commission, or any of the respondents, any of the questions or matters set forth in Government Code Section 1028.1 (C.T. 3, 14).

<sup>3</sup> The instant case and the companion case of Nelson v. Los Angeles County, et al. (26 Civ. 22680), were consolidated for oral argument by the Court below.

### III. STATUTE INVOLVED

The statute herein involved is Section 1028. 1 of the Government Code of the State of California (hereinafter set forth in full as Appendix "B").

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#### ARGUMENT

I. THE SUMMARY DISCHARGE OF A PUBLIC EMPLOYEE FOR EXERCISE OF A CONSTITUTIONAL PRIVILEGE IS ARBITRARY AND DISCRIMINATORY AND A DENIAL OF DUE PROCESS OF LAW CONTRARY TO SLOCHOWER V. BOARD OF EDUCATION, 350 U.S. 551 AND BOARD OF EDUCATION V. MASS, 47 CAL. 2D 494

There is no question but that petitioner was discharged solely and only because of his refusal, on Constitutional grounds, to answer questions before a Congressional Committee (C.T. 2, 3, 13, 14, 16, 17), and further that such questions had nothing to do with his fitness or qualifications for his employment (Exhibit "A", C.T. 16, 17).<sup>4</sup>

The United States Supreme Court in Slochower, reiterated (350 U.S. at 556) the Constitutional principals set forth in Wieman v. Updegraff, 344 U.S. 183, 192:

"We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that  
280 Constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory."

In the Slochower case, the Court held invalid the discharge of a public employee under the circumstances of the instant case, because (350 U.S. at 558):

"The heavy hand of the Statute falls alike on all who exercised their constitutional privileges, the full enjoyment of

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<sup>4</sup> The argument relating to the fundamental due process distinction between refusal to answer questions propounded by the employer as distinguished from refusal to answer questions propounded by a Congressional Investigating Committee are more fully set out in the briefs in the companion case, Nelson v. County of Los Angeles (2d Civ. 22680), in which Petition for Hearing in this Court is being filed concurrently herewith. The Court's attention is respectfully invited to the argument therein set forth.

which every person is entitled to receive. Such action falls clearly within the prohibition of *Wieman v. Updegraff*, 344 U.S. 183, *supra*."

It is submitted that these cases were decided on Constitutional issues and not on any rule of a State, or sub-division thereof, as to what procedural rights a particular public employee might or might not have. Indeed, it is precisely because the state procedure did not afford due process that the Supreme Court was required to act. This Court in *Board of Education v. Mass*, 47 Cal. 2d 494, at page 499, stated:

"We understand the holding of the *Slochower* case to be that a public employee may be dismissed for invoking the privilege against self incrimination only if, after a full hearing in which he is afforded an opportunity to explain his reasons for claiming the privilege, it is determined that his refusal to answer is sufficient under the circumstances to warrant dismissal. The judgment involved here was rendered before the *Slochower* case was decided by the United States Supreme Court, and it is clear from the record that the parties and the trial court construed section 12604 of the Education Code as requiring the dismissal of an employee who refused to answer a question on the ground his answer might incriminate him, regardless of his reasons for claiming the privilege allowed by the Fifth Amendment."

Petitioner herein was discharged under the provisions of Government Code 1028.1 (C.T. 16), which is identical in language with Education Code 12604 under consideration by this Court in the *Mass* case.

It is submitted that the Court below has erroneously interpreted the "due process" meaning of "hearing" as used by the United States Supreme Court in *Slochower* and by this Court in *Mass*. The Court below (Appendix "A"; 163 A.C.A. at 676) states:

"An analysis of both opinions discloses that the Court determined the rights of employment and discharge under conditions of tenure, or permanency, wherein by statute the employee was entitled to a hearing, as compared with the temporary status of petitioner herein and his total lack

282 of any right of hearing under the charter and civil service rules. The rights involved under the Slochower and Mass cases were of statutory origin and in each the statutory safeguards had been built into certain rights of tenure which required there could be no discharge in the manner provided by law until such time as a full and complete hearing had been granted. In the instant case there is no statutory right for a hearing prior to the discharge of the petitioner, a temporary employee. Holding a temporary status only he had no basic right to either a hearing or to county employment and whatever his rights were must be measured by the county charter and the civil service rules adopted thereunder. The temporary status enjoyed by him distinguishes him from the permanency in the Slochower and Mass cases."

We submit that regardless of what county charter or civil service rule rights respondents may have had to discharge a temporary employee with or without reason, the true meaning of Slochower and Mass is that a public employee cannot be discharged for a reason which violates the Fourteenth Amendment. Accordingly, the summary discharge of petitioner, where nothing mattered, save whether there was refusal to answer questions having nothing to do with petitioner's  
283 fitness as a county employee, before a legislative committee, does not satisfy the interdict of Slochower; does not afford the individual "protection \* \* \* against arbitrary action," 350 U.S. 559. This, because the same lack of due process resulted as in Slochower and Mass; petitioner was discharged solely and only because of his refusal, on a proper claim of privilege, to answer questions before a Federal Committee as distinguished from being discharged for refusal to answer questions propounded by his employer relating to qualifications and fitness for employment. (Cf. *Lerner v. Casey*, — U.S. —; 78 S. Ct. 1311; and *Beilan v. Board of Education*, — U.S. —; 78 S. Ct. 1317).

Moreover, we respectfully submit, the court below was in error in its appraisal of the Slochower case as being decided on the basis that Prof. Slochower had tenure. The New York City Charter there, as the civil service rules here, precisely said that there was no right to a hearing. That being the

case, Slochower there, as petitioner here, was denied due process. As the Slochower case demonstrates, the federally guaranteed constitutional right to due process does not depend for its recognition in court based upon whether a city or county charter grants it.

The emphasis by the United States Supreme Court in the Lerner and Beilan cases, supra, on the constitutional distinction between questioning by a federal congressional committee and questioning by the employer further emphasizes the necessity of this Court's granting a hearing to consider such  
 284 question left undecided by this Court in the decision in the Mass case. The decision in the Court below can only be interpreted as precedent for the proposition that any rights of a public employee to a "hearing" relative to a discharge for refusal to answer questions by a Federal Investigative Committee are predicated upon rights of "tenure" or "permanency" of employment and not upon Constitutional grounds as guaranteed by the Fourteenth Amendment.

## II. PETITIONER WAS IN FACT DISCHARGED FOR HIS REFUSAL TO ANSWER QUESTIONS BEFORE A CONGRESSIONAL COMMITTEE WHERE PETITIONER ASSERTED THE PRIVILEGE AGAINST SELF INCRIMINATION UNDER THE FIFTH AMENDMENT

We agree with the Court below that "at no time has the cause of petitioner's discharge been alleged to be anything but insubordination and violation of Section 1028.1, \* \* \*" (Appendix "A"; 163 A.C.A. at 672). But this begs the issue. In fact the true reason for the discharge of petitioner was petitioner's admitted refusal to answer questions as to opinions, affiliation and membership before the House Committee on Un-American Activities, based upon the exercise of rights guaranteed by the First and Fifth Amendments of the United States Constitution. At no time has petitioner been questioned by his employer, the respondents herein, relative to his fitness for employment; instead respondents seized upon petitioner's refusal to answer questions, upon the claim of privilege, before the Federal Committee and by virtue of  
 285 Government Code Section 1028.1 turned such refusal into a conclusive presumption of guilt and discharged



petitioner. (Cf. Slochower, 350 U.S. at 559). It is submitted that under Slochower and Mass such cannot be done without violating due process of law.

This Court in the recent cases of *People v. Calhoun*, 50 A.C. 61 and *People v. Snyder*, 50 A.C. 117, reiterated and reaffirmed that no adverse inference may be drawn from the assertion of the Constitutional privilege. As this Court stated at 50 A.C. at 71:

"\* \* \* (N)o implication of guilt can be drawn from a defendant's reliance on the Constitutional guarantee of the Fifth Amendment to the Constitution of the United States (or) Article I, Section 13 of the Constitution of the State of California \* \* \*"

The Court below in answering petitioner's contention that he was discharged for invoking his Constitutional privilege and that an implication of guilt was imputed to that exercise states (Appendix "A"; 163 A.C.A. at 676):

"Whatever implication he wishes to attach to his having invoked the privilege is *immaterial* here (emphasis added). Section 1028.1 heretofore held constitutional defines the refusal to answer as 'insubordination' which authorizes dismissal."

286 It is respectfully pointed out that the cases cited by the Court below are all cases involving situations where the employee was questioned by his employer, as distinguished from the case herein. Furthermore, the court below on the one hand asserts that the sole reason for termination of petitioner was "insubordination" but states (Appendix "A"; 163 A.C.A. at 672):

"The right to discharge a public employee for refusal to testify under the circumstances here involved, the fact that his refusal constitutes insubordination, and the conclusion that *either disloyalty or insubordination establishes unfitness have been determined by prior judicial decisions.*" [Emphasis added.]

And on the other hand it states (Appendix "A"; 163 A.C.A. at 673):

"Therefore a government employee may be required to disclose certain information relative to fitness and *loyalty* as a

reasonable condition for retaining public employment \* \* \*  
[Emphasis added.]

And then it says (Appendix "A"; 163 A.C.A. at 674):

"Petitioner can demand no greater degree of privilege than any other temporary county civil service employee *regardless of any implied question of loyalty or disloyalty.*" [Emphasis added.]

And further (Appendix "A"; 163 A.C.A. at 675) in reply to petitioner's argument regarding Housing Authority of  
287 City of Los Angeles v. Cordova, 130 Cal. App. 2d Sup.  
883 the Court says:

"It seems to this Court that housing subversives does not present the same serious problem as hiring them."

It is submitted that the Court below has equated "insubordination" with "loyalty" on the part of public employees under the statute. It can scarcely be said, therefore, that even in the view of the Court below that petitioner was, in truth and in fact, discharged merely for "insubordination", that the question of the implication from the exercise of the privilege was "immaterial here". This Court should therefore grant a hearing in order to clarify the ambiguity in meaning of the opinion in the Court below and preclude said opinion being a precedent for the concept that discharge for insubordination under Section 1028.1 is related or in any way involved with questions of loyalty or political beliefs.

### III. THE COURT BELOW HAS FAILED TO DISTINGUISH IN ITS OPINION THE FUNDAMENTAL DIFFERENCE BETWEEN PRO- CEDURAL AND SUBSTANTIVE DUE PROCESS

Conceding arguendo that the petitioner herein had no right to a "hearing" under the rules of the Los Angeles County Civil Service Commission, it is submitted that the essential issue herein is not whether petitioner was granted a "hearing" as a matter of procedural due process, but on the contrary,  
288 whether the summary discharge of petitioner with or without a hearing for exercising a Constitutional privilege in answer to questions not propounded by his employer is a denial of substantive due process.

The Court below has concluded that a temporary employee

had no "vested right to county employment" (Appendix "A", 163 A.C.A. at 676). But, as the Slochower and Wieman cases demonstrate, that does not meet the issue. The Court below relied heavily upon the cases of *Bailey v. Richardson*, 182 S. 2d 46 (C.A.D.C. 1952) affirmed by reason of an equally divided Court, 341 U.S. 918 and *Friedman v. Schwellenbach*, 159 Fed. 2d 22 (C.A.D.C. 1946) cert. denied 330 U.S. 838 (Appendix "A"; 163 A.C.A. at 676-678). It is submitted that these cases can no longer be said to be good law by reason of subsequent decisions of the United States Supreme Court. In *Cole v. Young*, 351 U.S. 536, the Court held that the entire loyalty-security program involved in those cases applied only to a limited few government employees—those in "sensitive positions" and it reversed the discharge. In *Peters v. Hobby*, 349 U.S. 331, involving the same loyalty-security program, the Court held that the discharge was invalid as violative of due process. And compare *Parker v. Lester*, 227 Fed. 2d 708 (C.A. 9 1955), on the issue of the constitutional right to due process, including the right to an adequate hearing, whenever Government seeks to prevent one from working on the ground of "loyalty" or "security". It is submitted that the "right" in the *Parker* case of seamen to engage in their chosen occupation is of no greater constitutional stature than the right of one to earn his living as a social worker. In *Parker*, the attempt of the Government to deprive seamen of jobs by inadequate hearings (in the instant case there was no hearing at all) was violative of due process. So here. The seaman's job in the *Parker* case was not statutory nor provided for under Civil Service Rules. Nevertheless it is the genius of the due process clause to protect the right of a citizen to engage in his occupation and not be deprived of that right by governmental action without the requirements of that clause having been observed.

The precise issue of the *Parker v. Lester* case is presented herein. For the petitioner may have no absolute right to County employment and he may be discharged by the County, but he may not be discharged in a manner or on a ground inconsistent with due process of law. As the United States Supreme Court stated in *Wieman v. Updegraff* (supra):

"Congress could not enact a regulation that no Republican, Jew or Negro shall be appointed to Federal Office, or that no Federal employee shall attend Mass or take any active part in missionary work." (344 U.S. at 191, 192.)

No more could a State. Nor can a county enact a valid regulation which on its face, or as interpreted here, states that an employee who exercises a constitutional right before a congressional committee ipso facto and eo instante, loses his job.

The United States Supreme Court has made it clear 290 that the Constitutional protections do extend to a public servant who is patently and arbitrarily or discriminatorily deprived of employment, regardless of any "right" to such employment. Therefore, it is submitted that where the State discharges an employee for the exercise of a federally protected right, the State then enters an area controlled by Slochower and Mass "and in the manner provided by law" is not limited to a procedural "right" to a hearing. On the contrary, "in the manner provided by law" means a manner consonant with due process whose purpose is to guarantee and to restrain every branch of government from arbitrary and unreasonable exercise of power and to give protection against any arbitrary interference with rights by Government.

#### IV. PETITIONER COULD NOT BE DISCHARGED UNDER GOVERNMENT CODE 1028.1 BECAUSE THE COMMITTEE WAS NOT A "DULY AUTHORIZED COMMITTEE OF THE CONGRESS"

Petitioner's position on this point is the same as in Nelson v. County of Los Angeles, 2d Civ. No. 22680, before this Court. The argument is set out in that Petition for Hearing as Point V and is not repeated here but is incorporated herein as though fully set forth. The Court's attention is respectfully invited thereto.

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#### CONCLUSION

The Petition for Hearing should be granted.  
Respectfully submitted.

A. L. WIRIN,

FRED OKRAND,

WILLIAM T. PILLSBURY,

*Attorneys for Petitioner and Respondent.*

OPINION

GLOBE

v.

COUNTY OF LOS ANGELES

Omitted. Printed side page 261 supra.

California Government Code 1028.1:

"It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the state or local agency by which such employee is employed, to appear before such governing body, or a committee or subcommittee thereof, or by a duly authorized committee of the Congress of the United States or of the Legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

(a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States or of any state.

(b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States or of any state.

(c) Past knowing membership at any time since September 10, 1948, in any organization which, to the knowledge of such employee, during the time of the employee's membership advocated the forceful or violent overthrow of the Government of the United States or of any state.

305 (d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since September 10, 1948.

Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so

propounded shall be guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law."

306 In the Supreme Court of the State of California

2nd Civ. No. 22775

*Answer to petition for hearing*

October 31, 1958

[Title omitted.]

*To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:*

Arthur Globe, the plaintiff and respondent, has filed his petition for hearing before this Honorable Court. The petition is based upon the following grounds:

1. Important questions under the United States Constitution and Article I, Section 13 of the California Constitution, are presented.

2. The decision in the case of Board of Education v. Mass, 47 Cal. 2d 494, left undecided an important question of law under the Government Code Section 1028.1.

307 3. The constitutional issue presented is an important one that can be expected to recur in the future.

The gist of the petition is, of course, that the opinion of the District Court of Appeal is erroneous. The defendants and appellants submit that the opinion of the District Court of Appeal is correct and that it properly disposed of all legal arguments advanced by the petitioner therein and herein, and thus there is no merit to any of the grounds stated in the Petition for Hearing.

#### STATEMENT OF THE CASE

The opinion of the District Court of Appeal (Petition for Hearing, Appendix A; 163 A.C.A. 668) accurately and completely sets forth the facts pertinent to the issue. The question presented is properly stated therein as follows at page 670:



"The issue before us is whether the County Civil Service Commission is required to hold a hearing on the discharge of a temporary county employee for a violation of Section 1028.1 of the Government Code."

## POINT I

THE SUMMARY DISCHARGE OF A PROBATIONARY COUNTY EMPLOYEE WITHOUT A HEARING IS FREE FROM ANY CONSTITUTIONAL OBJECTION

308 . Bailey v. Richardson, 182 F. 2d 46, 53, affirmed 341 U.S. 918 [71 S. Ct. 669, 95 L. Ed. 1352];

Freedman v. Schwellanbach, 159 F. 2d 22, cert. den., 330 U.S. 838 [67 S. Ct. 979, 91 L. Ed. 128].

Both of the above cases involve loyalty discharges of federal employees whose status was the same as petitioner in that they were probationary employees. As we pointed out at pages 15 and 16 of Appellants' Opening Brief and under Point IV, pages 7 to 11 of Appellants' Closing Brief, the above cited cases are authority that the discharge of a probationary employee is free from any constitutional objection because due process is not applicable unless one is being deprived of something to which he has a right. A temporary employee has no right to a position and thus, absent a statute, has no more right to a hearing on dismissal than an applicant for a position.

In Bailey v. Richardson, supra, 182 F. 2d 46, at page 55, the court said:

"\* \* \* If her status was merely that of an applicant for appointment, as we think it was, her nonappointment involved no procedural constitutional rights. Obviously, an ap-  
309 plicant for office has no constitutional right to a hearing or a specification of the reasons why he is not appointed."

There Bailey, the petitioner, had been appointed provisionally to her position with the Federal Government.

The fact, therefore, that Globe was a mere temporary employee, a probationer serving during the period of time within which the county was permitted to decide whether or not it desired to retain him as an employee, answers all the argu-

ments advanced by Globe. Neither Board of Education v. Mass, supra, 47 Cal. 2d 494, nor Slochower v. Board of Higher Education, 350 U.S. 551, has any application to the instant case because of that simple fact, both of those cases being involved with permanent employees.

## POINT II

### PETITIONER'S DISCHARGE WAS NOT BASED UPON ANY PRESUMPTION OF GUILT BY REASON OF INVOKING THE FIFTH AMENDMENT

Under Point II of the Petition for Hearing, counsel attempts to drag a red herring across the court's path by asserting that the real cause of his discharge was a conclusive presumption of guilt because his refusal to testify was under the claim of constitutional privilege.

That is a purely false assumption and counsel knows it.

The County is not concerned in Globe's reasons for refusing to testify. It would have made no difference what reason he gave for such refusal or if he gave no reason. His mere silence constituted a violation of the code section and was the true reason for his discharge.

The cases which refer to implication of guilt from invoking the Fifth Amendment have no application to Globe's case or to a violation of Section 1028.1 of the Government Code.

## CONCLUSION

The opinion of the District Court of Appeal is not at odds with any decided case cited by counsel either in the briefs or in the Petition for Hearing. On the contrary, it is harmonious with all the leading cases. No question of implication of guilt from reliance upon the Fifth Amendment is involved, as petitioner contends. Whether Globe was a Communist or not is of no concern whatever. He was guilty of insubordination, of violation of a duty which involved his fitness for service, and it makes no difference why he refused to testify. He was subject to summary dismissal without a hearing be-

214 NELSON AND GLOBE VS. COUNTY OF LOS ANGELES, ET AL.

cause of his temporary status. The Petition for Hearing should therefore be denied.

Respectfully submitted.

HAROLD W. KENNEDY,  
*County Counsel.*

WM. E. LAMOREAUX,  
*Assistant County Counsel.*

RONALD L. SCHNEIDER,  
*Deputy County Counsel.*

By \_\_\_\_\_,  
*Attorneys for Respondents and Appellants.*

311 Affidavit of service by mail (omitted in printing).

312 In the Supreme Court of the State of California,  
in Bank

2nd District, Division 1, Civ. No. 22775

GLOBE

v.

COUNTY OF LOS ANGELES

OPINION

Order Due November 17, 1958

Order denying hearing after judgment by District Court of  
Appeal

Filed November 12, 1958

[File endorsement omitted.]

Respondent's petition for hearing denied.

Gibson, C. J., Carter, J. and Traynor, J. are of the opinion  
that the petition should be granted.

GIBSON,  
*Chief Justice.*

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Supreme Court of the United States

No. 608 Misc., October Term, 1958

THOMAS W. NELSON AND ARTHUR GLOBE, PETITIONERS

v.

COUNTY OF LOS ANGELES ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF  
APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE  
DISTRICT

*Order allowing certiorari*

June 29, 1959

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted and the case is transferred to the appellate docket as No. 1038.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

**FILE COPY**

Office-Supreme Court, U.S.

**FILED**

**NOV 5 1959**

**JAMES R. BROWNING, Clerk**

**Supreme Court of the United States**

**October Term, 1959**

**No. 152**

**THOMAS W. NELSON and ARTHUR GLOBE,**

*Petitioners,*

*against*

**COUNTY OF LOS ANGELES, ET AL.,**

*Respondents.*

**On Writ of Certiorari to the District Court of Appeal of  
the State of California, Second Appellate District**

**NOTICE OF MOTION FOR LEAVE TO FILE BRIEF-  
AMICUS CURIAE AND BRIEF**

**MURRAY A. GORDON,**

*Attorney for National Association of  
Social Workers, Amicus Curiae.*

# Supreme Court of the United States

October Term, 1959

No. 152

---

THOMAS W. NELSON and ARTHUR GLOBE,  
*Petitioners,*

*against*

COUNTY OF LOS ANGELES, *et al.*,  
*Respondents.*

---

On Writ of Certiorari to the District Court of Appeal of  
the State of California, Second Appellate District

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## MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

The National Association of Social Workers respectfully moves this Court for leave to file the accompanying brief as *amicus curiae*.

The National Association of Social Workers was formed on October 1, 1955, as the successor of the American Association of Group Workers, American Association of Medical Social Workers, American Association of Psychiatric Social Workers, American Association of Social Workers, Association for the Study of Community Organization, National Association of School Social Workers, and the Social Work Research Group. The organization has a membership of 25,000 and 153 chapters. Membership is available to any person who has been graduated from a graduate professional school of social work accredited by the Council on Social Work Education or, prior to June 30, 1952, by the American Association of Schools of Social Work.



Our purpose and activities include the following: To promote the quality and effectiveness of social work practice in the United States of America through services to the individual, the group and the community; to further the broad objectives of improving conditions of life in our democratic society through utilization of the professional knowledge and skills of social work, and to expand through research the knowledge necessary to define and attain these goals; to provide opportunity for the social work profession to work in unity toward maintaining and promoting high standards of practice and of preparation for practice and toward alleviating or preventing sources of deprivation, distress and strain susceptible of being influenced by social work methods and by social action. To implement the foregoing, the National Association of Social Workers engages in a variety of educational and other activities, including the publication, since 1957, of the Social Work Year Book.

Our interest in the instant proceeding derives from our concern for the development of acceptable social work personnel standards and practices which we believe jeopardized by the California procedures here under review. The record here discloses the discharge by the County of Los Angeles of two competent and satisfactory social workers for no cause other than the concededly proper exercise by them of a constitutional privilege before the House Committee on Un-American Activities with respect to questions, concerning their political associations, as to which petitioners had previously made the required disclosure to Los Angeles. Our membership is necessarily interested and adversely affected when the tenure and the job security of social workers is thus disregarded for insufficient cause.

In the accompanying brief we argue that in these cases the California District Court of Appeal, Second Appellate District, misconceived the meaning of this Court's deci-

sion in *Slochower v. Board*, 350 U. S. 551, as supplemented by the rulings in *Reilan v. Board*, 357 U. S. 399, and *Lerner v. Casey*, 357 U. S. 468. The thrust of the cited series of decisions is that the proper claim of privilege by a local civil servant before a congressional committee may not be the occasion for his dismissal absent any showing of a failure on his part to make full and candid answer to appropriate inquiries by his employer. The effect of *Slochower* is not to be avoided by the hearing afforded the petitioner Nelson before the Los Angeles Civil Service Commission; that hearing was evidently addressed solely to the inquiry whether Nelson in fact claimed privilege and involved no failure by Nelson to answer inquiries put by his employer. The foregoing argument we believe not to have been fully developed in the brief of petitioners and, accordingly, we ask leave to submit our brief thereon.

We have sought and obtained the consent of counsel for both parties to the filing of this brief.

Respectfully submitted,

MURRAY A. GORDON,  
Attorney for *Amicus Curiae*,  
401 Broadway,  
New York 13, New York.

Dated: New York, N. Y.,  
November 2, 1959.

# Supreme Court of the United States

October Term, 1959

No. 152

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THOMAS W. NELSON and ARTHUR GLOBE,  
*Petitioners,*  
*against*

COUNTY OF LOS ANGELES, *et al.*,  
*Respondents.*

---

On Writ of Certiorari to the District Court of Appeal of  
the State of California, Second Appellate District

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## BRIEF OF AMICUS CURIAE

This brief is respectfully submitted by the National Association of Social Workers, as *amicus curiae*, in support of the petitioners herein. Our interest in the issues raised is set forth in the preceding motion for leave to file this brief.

### Statement of the Case

The statement contained in petitioners' brief fairly and fully states the facts herein and is not here repeated. We would, however, make reference to one circumstance not developed by petitioners:

Before the House Committee on Un-American Activities each of the petitioners claimed privilege as to numerous questions. But only in four instances were the petitioners thereafter directed to answer (see R. 25-26, 30, 162-163),

and in one of those instances an answer was forthcoming upon such direction (see R. 162). To the extent that respondents have designated in their pleadings the unanswered questions for which petitioners have been discharged (see R. 114, 174-176; see also R. 104-105, 178), there was either no direction to answer or the questions do not appear to fall within the scope of the California statute (Code, § 1028.1) upon which respondents rely.<sup>1</sup> It is well settled that no testimonial duty or obligation arises until a witness is directed to answer after he has noted his objection to a question. *Quinn v. United States*, 349 U. S. 155; *Bart v. United States*, 349 U. S. 219; *Emspak v. United States*, 349 U. S. 190; *Scully v. Virginia*, 359 U. S. 344; *Raley v. Ohio*, 360 U. S. 423; *Browder v. United States*, D. D. C., March 14, 1951 (unreported) (see 40 Georgetown Law J. 137). Absent such duty or obligation, a refusal to testify cannot reasonably be deemed "insubordination" within the meaning of § 1028.1. *Beilan v. Board*, 357 U. S. 399, 408.

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<sup>1</sup> § 1028.1 requires answers to questions relating (1) to advocacy of violent revolution; (2) present knowing membership in an organization now engaged in such advocacy; (3) past knowing membership since September 10, 1948, in an organization then engaged in such advocacy; and (4) present knowing membership in the Communist Party or past knowing membership in the Communist Party since September 10, 1948. Both petitioners were specifically questioned by the House Committee as to the advocacy and membership designated by § 1028.1 and claimed privilege; but neither petitioner was directed to answer any of those questions. Instead, Nelson was directed to answer only the questions whether he was returned to the United States from Japan "under the provisions of Public Law 808 \* \* \* as a security risk" (R. 25-26) and whether the signature appearing at the end of an employment application bearing his name was his signature (R. 29-30), while Gilbie was directed to answer whether he was "familiar" with the "John Reid Club of the Communist Party" at the University of Southern California where he was a graduate student from 1946 to 1950 (R. 162-163).

## Argument

The decisions of this Court have clearly staked out the boundaries governing the issues here raised. The County of Los Angeles is entitled to make reasonable and relevant inquiries of its employees in matters appertaining to their loyalty (*Garner v. Los Angeles Board*, 341 U. S. 716), and refusal to answer such inquiries may be the basis of dismissal (*Beilan v. Board*, 357 U. S. 399; *Lerner v. Casey*, 357 U. S. 468). But no such consequence may follow merely from a refusal to testify, upon a proper claim of privilege, before a congressional committee (*Slochower v. Board*, 350 U. S. 551). Since here the dismissals were based upon the refusal to testify before the House Committee on Un-American Activities on grounds of privilege, and not for any failure to respond to inquiries made by the petitioners' employers, these cases come within the ambit of *Slochower*.

The decisive significance here, as in *Slochower*, of petitioners' silence under a proper claim of privilege is disclosed by *Beilan*. For as Mr. Justice Harlan there pointed out, at 357 U. S., pp. 478-479, the claim of privilege is not available either under the Fifth or the Fourteenth Amendments, when asserted in the course of a local investigation, as compared with the protection, pursuant to *Slochower*, which is "as a matter of policy or constitutional requirement, to be accorded persons who under similar circumstances, in a federal inquiry, validly invoke the federal privilege" (357 U. S., at p. 479). The instant cases, as *Slochower* and unlike *Beilan* and *Lerner*, involve the consequence of dismissal following a proper and authorized claim of privilege, and, therefore, the conclusion reached in *Slochower* is mandated.

The plain applicability of *Slochower* here is not to be avoided in Nelson's case by the Civil Service Commission hearing which was accorded Nelson. Examination of the record before the Commission reveals that the sole testimony offered by the Department of Charities was that of

Nelson's employment by the Department (R. 2), Nelson's oaths of loyalty (R. 2) and negative response to the application form query concerning Communist Party membership (R. 3), Nelson's appearance and testimony before the House Committee on Un-American Activities (R. 3-5), and, finally, Nelson's discharge (R. 5). In short, the hearing was devoted exclusively to proof of the undisputed fact that Nelson had claimed his privilege before the House Committee while employed by the Department of Charities, and to argument of counsel concerning the significance of such claim. Nelson was neither asked, nor volunteered, at the Civil Service Commission hearing, concerning the matters as to which he had declined to testify before the House Committee.

Nelson's case differs from *Slochower*, therefore, only in that Nelson failed to volunteer at the Civil Service Commission hearing an explanation of what had transpired before the House Committee. Presumably Slochower could have similarly volunteered to explain to the New York Board of Higher Education about the matters as to which he remained silent before the Senate committee, yet no such requirement is to be found in *Slochower*.

The substantial identity between *Slochower* and Nelson's case, notwithstanding the Civil Service Commission hearing attended by Nelson, further emerges from the record; it nowhere there appears that Nelson was advised or on notice that he had some duty or obligation to explain his constitutionally authorized claim of privilege before the House Committee. Nelson was thus no more apprised of his duties or his rights to explain than was Slochower. For § 1028.1, on its face, no more contemplates a Civil Service Commission inquiry into the grounds for the claim of privilege than does § 903 of the New York City Charter involved in *Slochower* and *Board v. Mass.* 47 A. C. 501—the California ruling which established that, pursuant to *Slochower*, dismissal of an employee for a claim of priv-

ilege must be preceded by "a full hearing and a determination that his reasons for invoking the privilege are not sufficient"—was not decided until December 21, 1956, more than six months after Nelson's Civil Service Commission hearing.

### CONCLUSION.

**The judgment of the Court below should be reversed.**

Respectfully submitted,

MURRAY A. GORDON,  
*Attorney for National Association of  
Social Workers, Amicus Curiae.*



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**FILED**

NOV 7 1959.

**JAMES R. BROWNING, Clerk**

IN THE

**Supreme Court of the United States**

**October Term, 1959**

**No. 152**

**THOMAS W. NELSON,**

*Petitioner,*

*vs.*

**COUNTY OF LOS ANGELES, ET AL.,**

*Respondents.*

**ARTHUR GLOBE,**

*Petitioner,*

*vs.*

**COUNTY OF LOS ANGELES, ET AL.,**

*Respondents.*

**On Writs of Certiorari to the District Court of Appeal of the  
State of California, Second Appellate District, Division One**

**BRIEF FOR PETITIONERS**

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# Supreme Court of the United States

October Term, 1959

No. 152

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THOMAS W. NELSON and ARTHUR GLOBE,  
*Petitioners,*

vs.

COUNTY OF LOS ANGELES, et al.,  
*Respondents.*

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On Writ of Certiorari to the District Court of Appeal of the  
State of California, Second Appellate District, Division One

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## BRIEF FOR PETITIONERS

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### Citations to Opinions Below

No opinion was issued by the Superior Court of the State of California in and for the County of Los Angeles, in which the cases originated. The opinions of the District Court of Appeal in the *Nelson* and *Globe* cases respectively (R. 133, 185) are reported at 163 A. C. A. 668, 329 P. (2d) 978; and 163 A. C. A. 679, 329 P. (2d) 971. The orders of the Supreme Court of California denying petitioners' petitions for hearings in that court, without opinion but with three of seven judges dissenting, are not reported and appear at R. 159 and R. 214.

## Jurisdiction

Petitioners' petitions to the Supreme Court of California for hearings in that court after judgments by the District Court of Appeal, were denied by orders of the California Supreme Court filed on November 12, 1958 in the *Globe* case (R. 214) and November 13, 1958 in the *Nelson* case (R. 159). A joint petition for writs of certiorari to the District Court of Appeal and motions for leave to proceed *in forma pauperis* were filed on February 9, 1959, and were granted on June 29, 1959. This Court has jurisdiction under 28 U. S. C. 1257(3).

## Statutory and Constitutional Provisions Involved

*California Government Code, Section 1028.1* (Added Cal. Stats. 1953, c. 1646, p. 3367, Section 3, as amended Cal. Stats. 1957, c. 2106, p. 3731, Section 1):

"It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the State or local agency by which such employee is employed to appear before such governing body, or a committee or sub-committee thereof, or by a duly authorized committee of the Congress of the United States, or of the legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

(a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States or of any state.

(b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States or of any state.

(c) Past knowing membership at any time since October 3, 1945, in any organization which, to the knowledge of such employee, during the time of the employee's membership advocated the forceful or violent overthrow of the Government of the United States or of any state.

(d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since October 3, 1945.

(e) Present personal advocacy by the employee of the support of a foreign government against the United States in the event of hostilities between said foreign government and the United States.

Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law."<sup>1</sup>

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The federal statute and the House of Representatives' resolution with respect to the authority of the Committee on Un-American Activities of the House of Representatives, as well as the supremacy clause of Article VI of the United States Constitution and the First, Fifth, and Fourteenth Amendments to the United States Constitution, are also involved herein and are set forth in relevant part in the Appendix to this brief.

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<sup>1</sup> At the time of petitioners' discharges, before the 1957 amendments, the date in subsections (c) and (d) was September 10, 1948, and subsection (e) was not in the statute.

## Questions Presented

In their appearances before the Committee on Un-American Activities of the House of Representatives, the petitioners refused to answer certain questions on the grounds of the First and Fifth Amendments to the United States Constitution. The issues presented are:

1. Whether the California statute providing for the discharge of any public employee who refuses on any ground whatsoever to answer questions on specified subjects before a committee of the United States Congress, on its face and as here applied to petitioners, is arbitrary and violates the due process guarantee of the Fourteenth Amendment to the United States Constitution.

2. Whether the California statute violates the Federal supremacy principle of Article VI of the Constitution, the First Amendment, the Fifth Amendment, and both the privileges or immunities and due process clauses of the Fourteenth Amendment, in that it was here applied to authorize petitioners' discharges from employment because they invoked their rights under the First and Fifth Amendments in their appearances before a Congressional committee.

3. Whether the Court below erred in holding that the Committee on Un-American Activities of the House of Representatives acted in an authorized manner in asking the questions petitioners refused to answer.

## STATEMENT OF THE CASES

### 1. Petitioner Nelson's Employment and Discharge

Nelson was employed by the Los Angeles County Department of Charities on April 1, 1952 as a social worker; became a permanent employee in the position of medical social worker on June 16, 1953; and continued in that position until his discharge on May 2, 1956 (R. 107, 113; Findings of Superior Court, R. 123). In his applications for County employment, he answered all questions asked by the County, informing the County, among other things of his discharge from two previous government positions and the reasons therefor (R. 63, 73-74, 87-88). When he was employed in 1952, he also signed County and State loyalty oaths (R. 108, 114),<sup>1</sup> and stated when he was interviewed with respect to his affiliations that he was against *all* Communistic principles" (R. 58-59; italics in original report of interview); on September 7, 1954 he was asked in connection with his employment whether he was a member of

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<sup>1</sup> The oath established by the County of Los Angeles provided for the employee to swear that he did not at the time of taking the oath, and that he would not during his employment, advocate overthrow of the government and would not become a member of an organization so advocating; he also had to disclose whether he was, at the time of taking the oath or had been at any time since December 7, 1941, a member of any organization so advocating; finally, employee had to state whether or not he had ever been a member of, or directly or indirectly supported or followed, any of over 100 specified organizations. See *Parker v. County of Los Angeles*, 338 U. S. 327, 333-337, where the County oath is set forth. The oath imposed by the State on all public employees provides that the affiant does not advocate, and is not a member of any organization advocating, overthrow of the government and that he will not so advocate or become a member of such an organization during his term of employment; and it requires him to list any such organization to which he has belonged during the 5 preceding years. See California Constitution Art. 20, Sec. 3. Prior to the constitutional amendment, the same oath provision was incorporated in California Government Code, Section 3103.

the Communist Party and answered, "No" (R. 108, 114). In January 1956 information on his loyalty was reviewed in the office of the County sheriff (R. 96).<sup>1</sup>

After Nelson's notification on April 4, 1956, by the County of his duty to testify before the Committee on Un-American Activities of the United States House of Representatives if he were called before it, and of his liability to discharge in the event he failed to do so (R. 97, 101), Nelson appeared pursuant to subpoena at a hearing of a subcommittee of the House Committee, on April 20, 1956 (R. 21). As to the purpose of the hearings, the chairman of the subcommittee had stated at their opening four days earlier that the hearing would relate in part to a section of the Communist Party reputedly composed of musicians and to their activities in the Independent Progressive Party (R. 18); that the subcommittee would question a former Soviet intelligence officer on control of the arts in the Soviet Union and present Soviet policy (R. 18); and that "In the course of this investigation Communist Party activities of other individuals in the field of labor, business and government have come to the attention of the staff, and will also be the subject of investigation and of this hearing" (R. 19). Nelson, while answering some questions, refused to answer those relating to his discharges from previous government employment, of which he had already notified the County (see *supra*, preceding paragraph), and relating to Communist Party membership; he objected to these questions on grounds of the First and Fifth Amendments to the United States Constitution (R. 24-43).

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<sup>1</sup> The County had appointed a committee of county officials to supervise its "loyalty check program," and had authorized the committee to use the sheriff's office to obtain additional information on specific cases. See county directive in transcript of record, *Steiner v. County of Los Angeles*, No. 50, Oct. Term 1949, p. 17.



On May 2, 1956, Nelson was notified that effective that date he was discharged from his position pursuant to Government Code Section 1028.1, because of his refusal to answer questions before the "Committee on Un-American Activities, a duly authorized committee of the Congress of the United States" (R. 114-117; Findings of Superior Court, R. 124). The Civil Service Commission of Los Angeles County held a hearing on Nelson's appeal from his discharge, on June 11, 1956 (R. 1). The evidence consisted of a series of stipulations that he had been employed by the County, had signed the State and County loyalty oaths, had answered the County's question as to membership in the Communist Party, had been served with notice as to his duty under Government Code Section 1028.1 to answer questions before the House Committee, and had been subpoenaed and questioned before the House Committee (R. 2-3). The evidence also included the transcript of the opening of the House Committee's hearings and of Nelson's testimony before the Committee; and Nelson's personnel file, containing the report of his interview by the County on his affiliations as well as his employment applications and the ratings of his work (R. 2-6). Thereafter, the County Civil Service Commission, reciting the stipulated facts and Nelson's refusals to answer questions before the House Committee on grounds of the First and Fifth Amendments to the United States Constitution, concluded that Nelson was guilty of violating Government Code Section 1028.1 and that his discharge was therefore justified (R. 103-106; see Findings of Superior Court, R. 124-125).

## **2. Petitioner Globe's Employment and Discharge**

Globe was employed as a temporary employee by the Los Angeles County Department of Charities in the position of social-worker from March 28, 1955 continuously until his discharge on May 2, 1956 (R. 166, 172; Findings of

Superior Court, R. 180). In 1955, he took the State Loyalty Oath (R. 167, 176) described above, note 1, page 5. In March 1956, by reason of his satisfactory completion of a year of service and his grade on an examination which was more than satisfactory, Globe became eligible for permanent appointment (R. 167, 176).

Globe appeared in answer to subpoena at hearings of a subcommittee of the Committee on Un-American Activities of the House of Representatives on April 17, 1956 (R. 159, 172-173). While answering some of the questions asked him, Globe refused to answer others which related to a group at the University of Southern California purportedly known as the John Reed Club and to membership in the Communist Party (R. 162-164). He objected to these questions on the grounds of the First and Fifth Amendments to the United States Constitution (R. 162-164; Findings of Superior Court, R. 180). On May 2, 1956, Globe was notified that he was discharged on the ground of his refusal to answer questions before the House Committee (R. 177-179; Findings of Superior Court, R. 180). The County Civil Service Commission refused Globe's request for a hearing on his discharge (Findings of Superior Court, R. 181).

### **3. Proceedings in the Courts Below**

Nelson and Globe each petitioned for a writ of mandate in the Superior Court of California demanding his reinstatement to his position and reimbursement for loss of pay on the ground that his discharge was unconstitutional under both the State and Federal Constitutions (R. 106, 165). The Superior Court upheld Nelson's discharge but invalidated Globe's, distinguishing the two cases on the basis that Nelson had, and Globe had not, been accorded a hearing by the County Civil Service Commission (R. 121-122, 125, 181-182).

The District Court of Appeal affirmed the Superior Court's determination as to Nelson (R. 133-140) and reversed as to Globe (R. 187-198), thus upholding both discharges under California Government Code Section 1028.1. The Court of Appeal reasoned that Nelson's discharge conformed to the requirements of the due process guarantee of the Fourteenth Amendment on the basis largely of his hearing before the County Civil Service Commission (R. 134-138). However, it concluded that the due process guarantee did not require such a hearing in the case of Globe because he had the status of a temporary employee under the County civil service regulations (R. 192-197).

Interpreting this Court's decision in *Watkins v. United States*, 354 U. S. 178, the Court of Appeal further held that the House Committee acted in an authorized manner in asking the questions petitioners refused to answer (R. 139, 198).

The Supreme Court of California, without opinion but with three of the seven judges dissenting, refused petitioners' respective petitions for hearings in that court (R. 159, 214).

## **Summary of Argument**

### **I**

The court below determined the constitutionality of the discharge of petitioner Nelson as if he had been discharged for his refusal to answer questions before the Congressional committee plus his failure to explain his reasons for his refusal in his hearing before the County Civil Service Commission. The record shows that Nelson was in fact discharged on the sole ground of his refusal to answer on constitutional grounds before the Congressional committee, and the issue before this Court in his case as well as petitioner Globe's is the constitutionality of a discharge on this basis.

A. While we concede arguendo that the State has a legitimate interest in determining the loyalty of its employees, petitioners' discharges had no relation to this objective. *Slochower v. Board of Education*, 350 U. S. 551, establishes that a discharge solely because of a refusal on constitutional grounds to testify before a Congressional committee cannot be deemed related to the State's interest in determining the loyalty and fitness of its employees, and that discharges like petitioners' are therefore arbitrary and violations of due process. Petitioners' discharges could only be justified on the basis of the State's objective of determining fitness if an objection to testifying before a Congressional committee on Federal constitutional grounds were evidence of disloyalty. But it is indisputably established by this Court's decisions that reliance on the Constitution cannot be treated as evidence of guilt.

B. If Nelson's discharge had been based as the court below indicated, on his refusal to answer before the Congressional committee plus his failure to explain the reasons for such refusal at the County Civil Service Commission hearing, his discharge nevertheless would have violated due process. In the first place, Nelson was in no way informed or notified that the purpose of the hearing was that which thereafter was attributed to it by the court; that is, to accord him an opportunity to explain his reasons for his refusals to answer before the Congressional committee. Furthermore, the court's description of the employee's duty at the hearing is so vague that it would not have given Nelson adequate information even if it had been conveyed to him. It would violate due process for Nelson to be deprived of his employment for a failure to do an act which he had never been informed was required of him or of which he had been informed with great ambiguity. The due process guarantee requires that the State inform the employee clearly of his purported obligation, so that he has a choice of whether to comply or suffer loss of em-

ployment. Furthermore, in that the court below requires the employee to establish loyalty on an undefined basis without any disclosed charges, it imposes an unfair obligation, again violative of due process.

Finally, however the reasons and the proof the employee is to offer might be defined, it is the essence of the interpretation of the statute by the court below that the employee's refusal to answer on constitutional grounds before a Congressional committee throws a burden on him to produce evidence to establish his fitness for employment. His invocation of his constitutional rights is not a rational ground for presuming his disloyalty, and it is unreasonable, unjustifiable and a violation of due process to impose on him on that ground the burden of proving his loyalty.

C. The due process issue as to petitioner Globe's discharge is not the question treated by the court below; whether he should have had a hearing before the County Civil Service Commission on the facts of his case; rather, the due process issue is whether the acknowledged facts furnish a reasonable ground for discharge. The principle that it is arbitrary and a violation of due process to discharge an employee for a refusal to answer on constitutional grounds before a Congressional committee, applies to petitioner Globe and invalidates his discharge despite the fact that he had the status of a temporary employee under the County civil service regulations. The deprivation inflicted on petitioner Globe by his discharge was substantial. This Court has never differentiated in requiring reasonable grounds for discharge on the basis of the particularities of classification of employees. The due process question always is whether the State has arbitrarily caused a deprivation of employment; it is irrelevant how or when the employment might otherwise have terminated.

## II

A. Both the County Civil Service Commission and the court below treated as irrelevant the validity or invalidity of petitioners' objections under the First and Fifth Amendments to the questions asked by the House committee, and they thus include under the statute, and sanction, the discharge of persons who have a constitutional right to refuse to answer. Petitioners' cases must therefore be judged on the basis that they in fact had rights under the First and Fifth Amendments not to testify before the Congressional committee and that they were discharged for exercising rights granted them by the Federal constitution.

Thus, under the California statute as here applied, California coerces witnesses before Congressional committees to sacrifice their constitutional rights and to permit the consummation of any attempted violation of their rights by the committees. Furthermore, California's act has no justification from the standpoint of the legitimate State objective of determining the fitness of its employees. State action which is calculated to curtail the free exercise of Federal rights is unconstitutional. Here California, through unjustifiably interfering with the assertion and exercise of First and Fifth Amendment rights, violates those Amendments as well as the principle of Federal supremacy, and in addition the due process and privileges or immunities clauses of the Fourteenth Amendment.

B. The discharges of petitioners also violate the due process clause of the Fourteenth Amendment insofar as it embodies the protections of the First Amendment, because petitioners were discharged for their refusals to answer questions pertaining to their beliefs and associations, and the deterrent the State thus imposed on First Amendment freedoms has no justification. The act of California in discharging petitioners obviously cannot be justified on the basis of any legislative objective the Congressional committee may have had, nor were the discharges related to or based upon the State's determination of the fitness of its employees.



## III

The court below erred in its view that the subject of the investigation was sufficiently defined so that its relation to the Congressional committee's authority, and the pertinence of the questions petitioners refused to answer, was clear. Because there was no apparent question under inquiry and because of the subcommittee's failure to explain the subject of the investigation and the pertinence of the questions, upon the witnesses' objections, the court below erred in its conclusion that the subcommittee complied with the ruling in *Watkins v. United States*, 354 U. S. 178.

## ARGUMENT

## POINT I

**The California statute, on its face and as here applied to authorize the discharge of petitioners, violates the due process clause of the Fourteenth Amendment because it is wholly arbitrary and unreasonable.**

**The Cause of the Discharges and the Issue  
Before This Court**

The issue before this Court in petitioner Nelson's case, as in petitioner Globe's, is whether it is constitutional for the State to deprive a person of his employment solely because of his refusal on constitutional grounds to answer questions asked by a committee of the United States Congress. In Globe's case, the opinion of the Court below unequivocally recognizes that the refusal before the Congressional committee was the cause of discharge (R. 187); and we submit that the same conclusion is compelled by the record in Nelson's case.

The statute under which petitioners were discharged from their employment by the County of Los Angeles prescribes, among other things, discharge of any govern-

ment employee who refuses to answer on any grounds, whatsoever questions asked by a Congressional committee relating to advocacy of overthrow of the government or membership in an organization so advocating. The County Civil Service Commission, in upholding the notice of discharge (R. 98, 100) served on petitioner Nelson, found that he had violated the statute and that his discharge was justified (R. 105-6) because he had refused " 'on the basis of the First Amendment, supplemented by the Fifth Amendment of the United States Constitution' " to answer questions before the House Committee (R. 104-105). The refusal before the Congressional committee was the only factor considered by the County Civil Service Commission; indeed, no other circumstance is mentioned in its findings and conclusions. The opinion of the Superior Court (the court of original jurisdiction) recites that the cause of Nelson's discharge was his refusal to answer questions before the House Committee on Un-American Activities (R. 118-9).<sup>1</sup> The District Court of Appeal, the highest court of California to pass on the discharge, gives a similar description of the County Civil Service Commission's determination that Nelson was subject to discharge (R. 133-134). At the same time, however, the Court of Appeal, like the lower court, in effect recognized that Nelson's discharge on the sole ground of his refusal to testify before the Congressional committee, would be unconstitutional, and it sought to avoid interpreting the statute as authorizing such a discharge.

Accordingly, the Court below construed the statute to require, in the case of employees with permanent civil service status like Nelson, that the County Civil Service Commission hold a hearing prior to the employee's discharge; and the Court held that Nelson's discharge was valid because he refused to answer questions asked by the subcommittee of the House Committee *and* failed at the hearing held by the County Commission to explain "his

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<sup>1</sup> The Superior Court's findings of fact do not explicitly state the cause of discharge (see R. 123-124).

reasons, if any, for refusing to testify before the House subcommittee or matters germane thereto." (R. 135, 138.) However, the Court of Appeal at no point states that the County Commission actually grounded Nelson's discharge on anything that occurred or failed to occur at the Commission hearing; in effect its opinion states that his alleged "failure to explain" *could* have been a ground for discharge.

This Court, however, does not determine hypothetical cases; furthermore, when there is an allegation that a Federal right has been denied, it must itself determine the components of the issue presented by the case. See *Fiske v. Kansas*, 274 U. S. 380, 385-6.<sup>1</sup> This Court's obligation to consider the grounds for petitioners' discharges that are shown by the record, notwithstanding the opinion of the Court below, is confirmed by the principle that "The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based." *Securities and Exchange Comm. v. Chenery Corp.*, 318 U. S. 80, 87. See also *Perkins v. Elg*, 307 U. S. 325, 349; and see *Service v. Dulles*, 354 U. S. 363, 372.<sup>2</sup> Here it is manifest from the record that Nelson's discharge, like Globe's, was based solely on his refusal to testify, on constitutional grounds, before a Congressional committee; and the constitutionality of discharges on that basis is the issue before this Court.

In Section A of this Point, we shall consider the constitutionality under the due process clause of a discharge on this basis, without considering the special circumstance relied on by the Court below in upholding Globe's dis-

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<sup>1</sup> See also *Chambers v. Florida*, 309 U. S. 227, 228-9; *Norris v. Alabama*, 294 U. S. 587, 590; *Sterling v. Constantin*, 287 U. S. 378, 398. Cf. *Staub v. City of Baxley*, 355 U. S. 313, 318-320.

<sup>2</sup> Though the *Chenery* rule was evolved in the review of a determination by a Federal administrative agency, we submit that it is a rule of fairness and due process, requiring observance in all review proceedings.

charge—that is, that he had the status of a temporary employee under the County civil service regulations. In Section B, for the sake of a complete appraisal of the opinion of the Court below, we shall consider whether its interpretation of the California statute in Nelson's case would render it constitutional, though we do not believe this issue is truly before this Court. In Section C, we shall consider whether the circumstance that Globe was a temporary employee rendered his discharge constitutional.

**A. The Discharge of County Employees, Pursuant to the California Statute, on the Ground of Their Refusal on Constitutional Grounds to Answer Questions Asked By a Congressional Committee, is Arbitrary and Unreasonable.**

The court below upheld the statute and petitioners' discharges thereunder on the basis that the State can require a public employee to disclose information concerning his loyalty because it has a legitimate interest in the fitness of its employees and loyalty is a component of fitness (R. 136, 139-140). We would concede, arguendo only, that "loyalty", as reflected in belief and association, of a government employee is related to his fitness and that the State's determination of the loyalty of its employees is therefore a legitimate State objective. The issue here, however, is whether the discharges of petitioners on the basis of their refusals to answer on Constitutional grounds before the Congressional committee, have a reasonable relation or indeed any relation, to the objective of determining loyalty, and whether such discharges can be justified by this objective.

Petitioners' discharges had no relation to the State's determination of their loyalty. Thus, neither the County Civil Service Commission in validating the discharges, nor the Court of Appeal in upholding them, even considered whether the County required petitioners' answers to the House committee's questions in order to determine petitioners' loyalty. Indeed, before the committee hearing

and thus before the County could even have known, the committee's questions, it notified Nelson he would be discharged if he refused to answer them (R. 97, 101-102). That this statute and these discharges were not related to the County's determination of employee fitness is highlighted by the fact that the County had its own elaborate procedure for determining loyalty,<sup>1</sup> including oaths, questionnaires, and interviews as to beliefs and associations; and the applicable California loyalty procedure had in fact been applied to each petitioner (*supra*, pp. 5-6, 8).

Thus it is clear that the discharges of petitioners cannot be justified on the ground of the State's interest in determining their loyalty. This conclusion and the unconstitutionality of California's action is squarely established by *Slochower v. Board of Education*, 350 U. S. 551. The *Slochower* decision, applying the ruling in *Weiman v. Updegraff*, 344 U. S. 183, that the State cannot arbitrarily discharge its employees, holds that discharge solely because of invocation of the Fifth Amendment privilege before a Congressional committee is arbitrary. The rulings in *Beilan v. Board of Public Education*, 357 U. S. 399, and *Lerner v. Casey*, 357 U. S. 468, confirm, rather than in any way detract from, the *Slochower* holding. In both *Beilan* and *Lerner* the discharges were upheld because they arose from the State's inquiry into the loyalty of its employees; in neither was there a refusal to testify on the basis of Federal rights before a Federal body; and in both opinions the *Slochower* decision was explicitly confirmed. See especially *Beilan*, 357 U. S. at pp. 408-9; *Lerner*, 357 U. S. at pp. 479.

Petitioners' discharges could only be considered related to the State's purpose of determining fitness if an objec-

<sup>1</sup> See Horowitz, *Los Angeles City and County Loyalty Programs*, 5 Stanford Law Review 233 (1953).

tion to testifying before a Congressional committee on Federal constitutional grounds were evidence of disloyalty. But this Court has repeatedly held that a witness' invocation of his constitutional rights cannot be taken as evidence of guilt, nor can it be called subversive to rely on the Constitution. See *Quinn v. United States*, 349 U. S. 155, 162, 164; *Gruneirald v. United States*, 353 U. S. 391, 421; *Koenigsberg v. State Bar of California*, 353 U. S. 252, 270. If petitioners' discharges were upheld, it would mean that any reliance on the Constitution could automatically be treated as suspect, for California regards it as entirely irrelevant whether petitioners' constitutional objections before the House Committee were valid or invalid, made in good faith or bad. It may be noted that the statute was passed prior to this Court's emphasis on the observance of constitutional rights and limitations by Congressional committees; and it may have been the premise of the legislators that an assertion of constitutional rights before a committee was in itself suspect.

As a final point of arbitrariness, it is to be noted that due process would in any event dictate that the County weigh together, if it sought to make a loyalty determination, the information in its possession about its employees; here California made no such evaluation, basing itself instead solely on petitioners' refusals to answer before the Congressional committee.

Unrelated to the County's legitimate objective of determining the fitness of its employees and to its procedures for making such determinations, the California statute, as applied to petitioners, was related only to coercing them to forego their constitutional objections to testifying before the Congressional committee. Certainly the State has no legitimate interest in forcing employees to waive Federal constitutional rights before a Federal body, and indeed such coercion by the State is itself unconstitutional (see Point II below).



The Court of Appeal, in accordance with the statute, speaks of petitioners' objections to testifying before the House committee as "insubordination" (R. 140). But since there is no justification in terms of the State's legitimate objectives for its discharging its employees on the ground of their constitutional objections to testifying before a Congressional committee, justification cannot be created by the semantic device of saying the employees have a "duty" to testify and then terming violation of "the duty" insubordination.

Finally, we must note the extent of the injury California has inflicted on petitioners. Not only have petitioners been deprived of their present means of livelihood, but they have been discharged on a basis ostensibly related to disloyalty, that will arouse suspicion and jeopardize their future employment opportunities;<sup>1</sup> furthermore, their discharges trench on freedom of belief and association<sup>2</sup> and burden and interfere with the exercise of First and Fifth Amendment rights. To justify such a deprivation and interference, more than a slight or tangential interest of the State would be required. Here the purported interest of the State—that in the fitness of its employees—is altogether lacking. While the State may promote that interest by all reasonable means, it cannot on that score justify the arbitrary measure here at issue.

**B. The Interpretation Given to the California Statute By the Court Below Would Not Render Petitioner Nelson's Discharge Valid.**

Though, as we have already said (*supra*, pp. 13-15), the issue does not seem to us presented to this Court by the instant facts, we shall now consider the validity of Nelson's discharge as if it had rested on the basis suggested by the court below,

<sup>1</sup> Cf. *Wieman*, 344 U. S. at pp. 190-191; *Anti-Fascist Committee v. McGrath*, 341 U. S. 123, 185 (Jackson, J., concurring); *Shurtleff v. United States*, 189 U. S. 311, 317.

<sup>2</sup> Cf. *Speiser v. Randall*, 357 U. S. 513, 526.

### 1. No Notice of Purpose of Hearing

The court below construed the statute to mean that in the case of a refusal of a permanent civil service employee like Nelson to answer questions on constitutional grounds before a Congressional committee, a hearing should be held before the County Civil Service Commission at which he should be given an opportunity to explain the reasons for his refusal and matters germane thereto; and the court held that the Commission proceeding in Nelson's case conformed with the statutory requirement. However, the court does not indicate that the employee must be in any way notified of the purpose of the hearing, and its recitation of the proceedings before the Civil Service Commission makes clear that no notification of the purpose thereafter described by the court was in any way conveyed to Nelson (See opinion of the court below, R. 134-135, and see proceedings before Civil Service Commission, R. 1-7). Thus, assuming *arguendo* that a refusal to answer questions asked by a Congressional committee plus a failure to explain the reasons therefor is a constitutional ground for discharge, in this case there would nevertheless be a failure of due process. For we would have the case of a person deprived of his employment for failure to do an act which he had never been informed was required of him.

Due process guarantees that the State clearly inform an individual of an obligation so that he can make a choice between satisfying it or suffering the consequence of failure. See *Flaxer v. United States*, 358 U. S. 147, 151; *Raley v. Ohio*, 360 U. S. 423; *Scull v. Virginia*, 359 U. S. 344, 345, 352-353; *Jordan v. De George*, 341 U. S. 223, 230-231. In accordance with this principle, this Court has consistently affirmed that an employee must be warned of the acts or deficiencies that would constitute grounds for discharge. See *Garner v. Los Angeles Board*, 341 U. S. 716, 724; *Beilan*, 357 U. S. at p. 408; *Lerner*, 357 U. S. at p. 478. Here it is apparent that Nelson had no warning that he was to explain at the hearing "his reasons, if any,

for refusing to testify before the House subcommittee or matters germane thereto"—the purpose which the Court below thereafter attributed to the hearing—and he therefore had no choice of whether to comply or suffer loss of employment.

"It goes without saying that the requirements of a fair hearing include notice of the claims of the opposing party and an opportunity to meet them."<sup>1</sup> *A fortiori*, due process is violated when, as in the instant case, the affected individual is not informed even of the purpose of the hearing.

## 2. Vagueness of Employee's Burden

Moreover, even if Nelson had been informed of the purpose of the civil service commission hearing in the terms used by the court below, the notification would have been so vague and meaningless that his discharge for failure to fulfill his supposed obligation would violate due process. See cases cited *supra*, p. 20. The opinion of the court below is wholly ambiguous as to the employee's duty at the hearing; the most it does is to indicate that several possible interpretations are incorrect. Thus the opinion shows that the "reasons" the employee is to give at the hearing and the commission is to evaluate, are not the constitutional grounds on which he has relied in refusing to testify. In Nelson's case "reasons" in this sense were apparent from the exhibits introduced at Nelson's hearing and neither the civil service commission nor the court sought to evaluate them (and see R. 138). Again, it is clear that the court below did not regard the employer's own loyalty investigation or the facts therein disclosed as relevant. For, evidence was introduced, both at the County's and Nelson's instance, before the civil

<sup>1</sup> *F.T.C. v. National Lead Co.*, 352 U. S. 419, 427. See also *De Jonge v. Oregon*, 299 U. S. 353, 363; *Cole v. Arkansas*, 333 U. S. 196, 201.

service commission showing that he had undergone a loyalty investigation by the County and that he had answered all questions asked him in that investigation, taken all required oaths, etc.; but the production of this evidence was ignored both by the civil service commission and the court.

All that can be said is that the court below seems to require the employee to establish loyalty on some undefined basis without any disclosed charges. The fact that Nelson was not questioned by the commission was regarded as irrelevant (see opinion of court below, R. 138); Nelson was to initiate on his own, in some undisclosed way, the proof of his loyalty. For the State to discharge an employee for failing to meet such an indefinite and unfair obligation would violate due process. Compare *Greene v. McElroy*, 360 U. S. 474; *Speiser v. Randall*, 357 U. S. 513, 526.

The court below refers to an opinion of the California Supreme Court in which it reviewed a discharge under a California statute similar to the instant one. There too the employee had been discharged solely on the basis of his refusal to testify before a Congressional committee. See *Board of Education v. Mass*, 47 Cal. 2d 494, 304 P. 2d 1015. The California Supreme Court remanded the case for a hearing before the Board of Education saying: "Factors of the type mentioned in the *Slochower* decision should, of course, govern the determination as to the sufficiency of the employee's reasons" (R. 137). If and how this ruling was applied on remand does not appear from the reported decisions. In any event, in the instant case the Civil Service Commission did not consider such factors nor did the court below give any meaningful application to this formula. Instead, the court gave a purely *pro forma* application to the *Slochower* requirement that the employer must use a reasonable basis for evaluating fitness; the court below has treated the employer's holding of a hearing following a refusal to testify before a Congressional com-

mittee, as sufficient in itself, regardless of its nature, to validate the discharge.

The difficulty arises from a statute which prescribes a wholly arbitrary ground for discharge—that is, a refusal to testify on any ground whatsoever before a Congressional committee—and the attempt to interpret it so that it will conform with the constitutional requirement of reasonableness. It seems impossible to construe such a statute in conformity with due process; in any event, the reconciliation has not been here accomplished.

### 3. Arbitrariness of Presumption

However the reasons and the proof the employee is to offer may be defined, it is the essence of the interpretation of the statute by the court below that the employee's refusal to answer on constitutional grounds before a Congressional committee throws a burden on him to produce evidence to establish his fitness for employment. We submit that by the same token as it is unreasonable and arbitrary for the State to hold an employee's invocation of his constitutional rights before a Congressional committee to be conclusive reason for his discharge (*supra*, pp. 17-18), it is likewise unjustified and arbitrary to presume from such invocation that he is unfit and that there is a need for him to establish his loyalty. Disloyalty can neither be assumed nor presumed from the invocation of constitutional rights. Thus, it is an unreasonable and unjustifiable burden—without rational factual basis, and without justification in terms of the State's need to determine fitness—to impose on an employee, because of his refusal on constitutional grounds to testify before a Congressional committee, the burden of proving loyalty; and the statute, as interpreted by the Court below, is on this score again violative of due process. Compare *Speiser*, 357 U. S. at p. 524, and cases therein cited; *Adler v. Board of Education*, 342 U. S. 485, 495-496.

**C. The Discharge of Petitioner Globe Was Arbitrary and a Violation of Due Process Despite the Circumstance That He Had the Status of a Temporary Employee Under County Regulations.**

In Globe's case, the Court below recognized unequivocally that Globe was discharged solely because of his refusal on constitutional grounds to answer certain questions asked by the Un-American Activities Committee of the House of Representatives (R. 187-188, 190). The Court upheld his discharge on the basis that the due process guarantee did not require the County to grant him a hearing; it relied in part on the circumstance that the County Charter and regulations of the County Civil Service Commission did not provide for a hearing on the discharge of an employee who, like Globe, had not acquired permanent civil service status.

We submit the Court below misconceived the issue in limiting its attention to the question of whether Globe should or should not have had a hearing before the Civil Service Commission. There are two possible due process issues here—(1) whether the County is using an arbitrary ground of discharge, and (2) whether it is using an arbitrary procedure for determining whether that ground exists in the case of a particular employee. It is the first issue that is here involved, whereas the Court below addresses itself only to the latter. Our contention is that the ground for Globe's discharge—his refusal to testify on constitutional grounds before a Congressional committee—is arbitrary. It may be noted that there is nothing in the County Charter or Civil Service Commission regulations that is inconsistent with our position herein; they assume discharges will be predicated on grounds reasonably related to fitness, and merely regulate the method of determining whether such grounds exist.

It is established, as we have already shown, that it is arbitrary and a violation of due process for the State to discharge an employee solely because of his refusal to



testify on constitutional grounds before a Congressional committee, because such a refusal does not show disloyalty or unfitness (*supra*, pp. 17-18). This principle of due process is applicable whether the employee has temporary or permanent status under civil service laws; he suffers a substantial deprivation when he is deprived of his means of livelihood, even if he is not at the same time deprived of any additional prerequisites concomitant with permanent status.

We submit that the Court below erred in its view (R. 194) that the *Slochower* doctrine applies only to employees with permanent status. This Court held that Slochower's discharge violated due process because there had been no showing of "Slochower's continued employment to be inconsistent with a real interest of the State" (350 U. S. at p. 559). There was no thought in *Slochower* of differentiating in the application of this principle on the basis of the particularities of the classifications of employees. Our view of the meaning of *Slochower* is borne out by the fact that the opinion relies on the passage in the *Wieman* decision where this Court said: "We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory" (344 U. S. at p. 192. See *Slochower*, 350 U. S. at p. 556). At no point in *Wieman* did this Court consider the particular status or prerogatives of the employees there involved; clearly it was enough to bring into play the due process guarantee that the State was ousting a person from his employment, regardless of whether he had permanent or temporary status.

Nor in *Garner* or *Adler*,<sup>1</sup> in which the requirements of due process were also applied to public employment and

<sup>1</sup> *Garner v. Los Angeles Board*, 341 U. S. 716; *Adler v. Board of Education*, 342 U. S. 485.

which are also considered in *Slochower* (350 U. S. at pp. 555-6), was there any consideration of the particular status of the employees under State law. And in *Garner* this Court made no distinction between temporary and permanent employment in pointing to the necessity for the City of Los Angeles to interpret its ordinance in accordance with due process (341 U. S. at p. 724).

These decisions on public employment express a principle of due process found throughout this Court's opinions. The opportunity to earn a livelihood is basic, and the State cannot arbitrarily interfere with it. The question always is whether the State is arbitrarily causing a deprivation; it is irrelevant how or when the employment might otherwise have terminated. See *Truax v. Raich*, 239 U. S. 33, 38; *Anti-Fascist Committee v. McGrath*, 341 U. S. 123, 185 (Jackson, J., concurring); *Bomar v. Keyes*, 162 F. 2d 136, 139 (C. A. 2, 1947). \* Here Globe's employment would have continued but for his refusal on constitutional grounds to testify before the Congressional committee; the question is whether this was an arbitrary ground for terminating it and not whether, because he was a temporary employee, there were other reasons or ways it might have been terminated.<sup>1</sup>

In addition to terminating his means of livelihood, it appears that Globe's discharge deprived him of the oppor-

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<sup>1</sup> The Court below relied on *Bailey v. Richardson*, 182 F. 2d 46, 86 App. D. C. 248; affirmed by an equally divided Court without opinion, 341 U. S. 918 (R. 195). That case was decided on the assumption that Bailey had permanent status (182 F. 2d at p. 55); and the holding, to the effect that the due process guarantee did not apply to public employment, has indubitably been superseded by the holdings of this Court. In *Friedman v. Schwelienbach*, 159 F. 2d 22, 88 App. D. C. 365, cert. den. 338 U. S. 838, also cited by the Court below (R. 195), there was no holding as to the applicability of due process. The Court upheld Friedman's discharge on the basis of an administrative finding made after a hearing, that there was reasonable doubt of his loyalty.

tunity which he had earned by his work as a temporary employee, to be considered for the position of a permanent employee (*supra*, p. 8). The deprivation of this opportunity on an arbitrary basis of itself violates due process. Indeed, if Globe were not a public employee at all, and it were merely a question of denying him the opportunity to be considered for employment, the State could not arbitrarily discriminate against him.<sup>1</sup> Certainly this does not mean Globe or anyone else can demand that public employment be created or given him. He can be excluded from it, whether he is an incumbent or applicant, on grounds reasonably related to the State's needs; but, whether incumbent or applicant, he cannot be excluded from it arbitrarily, as he was in the instant case.

Finally, we must bear in mind that a discharge like Globe's ostensibly related to disloyalty, inflicts additional damage besides the termination of employment (discussed *supra*, p. 19); in consequence, the State's violation of the due process guarantee by its discharging him on an arbitrary ground is all the more onerous.

## POINT II

**The California statute as here applied is unconstitutional because it unjustifiably burdens and interferes with the exercise of First and Fifth Amendment rights.**

### **A. Coercion Against Assertion of Constitutional Rights**

The validity of the statute and California's discharge of the petitioners thereunder must be determined on the assumption that petitioners did in fact have rights under

<sup>1</sup> See *Schwartz v. Board of Bar Examiners*, 353 U. S. 232, 238-9: "A State cannot exclude a person from \* \* \* any \* \* \* occupation \* \* \* for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." See also *Koenigsberg v. State Bar*, 353 U. S. 252, 257-8; and *Wieman*, quoted *supra*, p. 25.

the First and Fifth Amendments to object to the questions they refused to answer before the Congressional subcommittee. We may note that the subcommittee itself honored petitioners' assertions of the Fifth Amendment privilege. However, we do not rely on the committee's view, nor is it necessary now to demonstrate that the Amendments were validly invoked. For, it is clear on the face of the statute that neither the civil service commission nor any other agency is to determine the validity of any invocation of constitutional rights before a Congressional committee; and the statute was so interpreted by the civil service commission and the court below. Both the Commission and the Court, treating as irrelevant the validity or invalidity of petitioners' objections under the First and Fifth Amendments, indubitably include under the statute, and sanction, the discharge of persons who have a constitutional right to refuse to answer.

Thus, petitioners' cases must be determined on the basis that they had rights under the First and Fifth Amendments not to testify before the Congressional committee and that they were discharged for exercising rights granted them by the Federal Constitution.

- This Court's unanimous holding in *Terral v. Burke*, 257 U. S. 529, is squarely applicable to demonstrate the invalidity of California's statute as here construed and applied. There Arkansas had provided that an out-of-state corporation would lose its license to do business in Arkansas if it brought a suit in or to the Federal court, rather than the State courts. This Court held that the United States Constitution (Article III, Section 2) gave the corporation a right to resort to the Federal court and that Arkansas could not demand the waiver of the exercise of this right as a condition of the privilege of doing business in Arkansas. When the Federal Constitution confers a right, "state action, whether legislative or executive, necessarily calculated to curtail the free exercise of the right

• • • is void" (257 U. S. at p. 532). Though Article III of the Constitution, like the First and Fifth Amendments here involved, is primarily a direction to the Federal Government, an interference by the State also "violate(s) the constitutional right" because the state in the exercise of all its powers is "subject to the limitations of the supreme fundamental law" (257 U. S. at pp. 532-3). It is a violation of Federal supremacy for the State to interfere with the exercise of Federally granted rights by the withdrawal of State granted privileges. See *Castle v. Hayes Freight Line*, 348 U. S. 61; cf. *Frost v. Railroad Commission*, 271 U. S. 583, 593.

In the instant case coercion of petitioners in their relations to the Federal government not only was the effect, but also must be presumed the purpose, of the State legislation, since it did not serve the State purpose of determining the fitness of its employees (see *supra*, pp. 16-18).<sup>1</sup> The threat of discharge under the California statute as here applied, is clearly "calculated to curtail the free exercise of the rights" of employees under the First and Fifth Amendments just as the threat in the *Terral* case to revoke the license to do business curtailed the exercise of the Federal right to resort to Federal courts. The outmoded debate as to whether California's discharge of petitioners constitutes the loss of the right or the privilege of employment need not be assayed; for even if a "privilege", the threatened loss operates as a potent coercion. See *American Communications Assn. v. Douds*, 339 U. S. 382, 405, 409;

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<sup>1</sup> Compare *Cummings v. Missouri*, 4 Wall, 277, 320; *Dent v. West Virginia*, 129 U. S. 114, 126; *United States v. Lovett*, 328 U. S. 303; cf. *Garner v. Los Angeles Board*, 341 U. S. 716, 722. Petitioners' discharges must be deemed coercive of First and Fifth Amendment rights notwithstanding the fact that in their cases the threat of discharge did not actually prevent the invocation of these rights. See *Bomar v. Keyes*, 162 F. 2d 136, 139 (C. A. 2, 1947, opinion by Judge Learned Hand); *Robeson v. Fanelli*, 94 F. Supp. 62, 69 (S. D. N. Y., 1950).

*Speiser*, 357 U. S. at pp. 518-519; *N.A.A.C.P. v. Alabama*, 357 U. S. 449, 461.<sup>1</sup>

Here California coerces witnesses before the Congressional committee to sacrifice their constitutional rights and to permit the consummation of any attempted violation of their rights by the committee. The State aids Congressional committees in transgressing the constitutional limitations on their powers if they attempt such transgression. California does not leave the witness free to invoke his constitutional rights and to test them, if challenged, under the prescribed Federal procedure—that is, the Federal contempt statute (2 U. S. C. 192). Instead, the State penalizes the witness for the very assertion of his rights. The protection which this Court has striven to accord to the constitutional rights of witnesses before Congressional committees,<sup>2</sup> is thwarted by California's interference with their invocation of these rights.

By curtailing the free exercise of First and Fifth Amendment rights, without any State justification (see *supra*, p. 18), California not only violates these rights and the principle of Federal supremacy, but we submit that it also violates the due process clause of the Fourteenth Amendment insofar as it incorporates First Amendment rights, and the privileges and immunities clause of the Fourteenth Amendment.<sup>3</sup>

<sup>1</sup> The coercive effect is obviously substantial even if the assertion of constitutional rights were only presumptive cause for discharge, as the Court below indicated (*supra*, p. 23), rather than conclusive cause.

<sup>2</sup> See, e.g., *Quinn v. United States*, 349 U. S. 155, 161-2; *Watkins v. United States*, 354 U. S. 178, 197.

<sup>3</sup> The Fifth Amendment privilege against self-incrimination, as well as the privilege of freely asserting against the Federal government all Federal constitutional rights, must be deemed part of "the privileges or immunities of citizens of the United States" which are protected against State abridgement by the Fourteenth Amendment. See *Hague v. C.I.O.*, 307 U. S. 496, 519, note 1 (opinion of Stone, C. J.); *Twinning v. New Jersey*, 211 U. S. 78, 97; *Re Kemmler*, 136 U. S. 436, 448; *Slaughterhouse Cases*, 16 Wall. 36, 79.



## **B. Deterrent to Free Exercise of First Amendment Rights**

Finally the discharge of petitioners violated the due process clause of the Fourteenth Amendment insofar as it incorporates the protections of the First Amendment, because petitioners were discharged, without justification, for their refusals to answer questions concerning their beliefs and associations. It is again unnecessary to determine whether it was in fact a violation of the First Amendment for the Congressional subcommittee to command answers to these questions. It is sufficient to observe that if it was constitutional for the Committee to ask questions impinging on First Amendment freedoms, it was constitutional only because the interference with freedom of belief and association was outweighed by a compelling legislative objective. See *Watkins*, 354 U. S. at pp. 198-199, 205-206; *N.A.A.C.P. v. Alabama*, 357 U. S. 449, 463.

The act of the State of California of discharging petitioners obviously cannot be justified on the basis of any legislative objective the Congressional committee may have had. Nor was there any other justification for the discharges, from the standpoint of the State's legitimate purposes: they were not reasonably related to, or based upon, the State's determination of the fitness of its employees (see *supra*, pp. 17-18). At the same time as they lack justification, the discharges of petitioners for failure to answer questions directed at the disclosure of unpopular beliefs and associations unquestionably act as a deterrent to non-conformist expression. For, such discharges generate fear that non-conformist political expression will lead to a choice of penalties: exposing one's beliefs and associations in answer to a Congressional committee's questions, with resulting humiliation and obloquy,<sup>1</sup> or loss of employment for failure to answer. Thus the sanction of discharge, as here used by California, limits the exercise of the First

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<sup>1</sup> See *N.A.A.C.P.*, 357 U. S. at p. 462; *Watkins*, 354 U. S. at pp. 197-8.

Amendment freedoms of belief, expression and association, without justification, and therefore violates the Fourteenth Amendment.

### POINT III

**The Court below erred in its ruling that the Committee was acting in an authorized manner in asking the questions petitioners refused to answer.**

The Court below construed the California statute to mean that the validity of petitioners' discharges depended on whether the questions they refused to answer were "duly authorized" as a matter of Federal law. The Court deemed the doctrine of the *Watkins* case applicable in determining whether the questions were properly asked, but distinguished the instant cases from *Watkins* saying: "In the present situation there was no vagueness in reference to the subject matter of the inquiry or its relation to the investigative powers of the committee. Petitioner was asked directly in regard to his own communistic activities and refused to answer such inquiries" (R. 139; see R. 198).

The Court below erred, we submit, in its view that the subject of the investigation was sufficiently defined so that its relation to the Committee's authority and the relation of the questions was clear. Indeed, the subcommittee's purposes were so undefined that we submit there was no apparent "question under inquiry" at all, by which the pertinence of the questions addressed to the petitioners might be appraised. At the opening session, the chairman of the subcommittee, after reciting the general terms of the Committee's mandate (R. 17),<sup>1</sup> stated that the hearing would deal with a group of musicians in the Communist

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<sup>1</sup> As to the vagueness of such a recitation, see *Watkins*, 354 U. S. at p. 209.

Party, control of the arts in the Soviet Union, and an analysis of Soviet policy as announced at the latest Congress of the Soviet Communist Party (R. 18). He then stated that the "Communist Party activities of other individuals in the field of labor, business and government" would be investigated and that there had been testimony as to the "existence of \* \* \* Communist Party cells which operated in various government agencies at various locations throughout the country" (R. 19-20). Only the quoted parts of the chairman's statement have any relevance in the instant case, since neither petitioner had any relation to the arts or the formulation of Soviet policy.

The quoted parts of the chairman's statement were no more than a statement of what individuals would be called and what evidence had been received, rather than a statement of a subject to be investigated. And even as a description of witnesses and testimony, the statement was broad and vague. For, in referring to "government" and "government agencies" the chairman apparently was not referring to the Federal government; petitioner Globe apparently had never held or even applied for a job in a Federal agency and his questioning did not touch on Federal work (see R. 159-165). Thus the narrowest possible formulation of the intention revealed by the Committee was that it intended to call anyone suspected of any association with the Communist Party employed in any agency of any government unit in the country. It did not state the purpose or intended scope of its interrogation of these persons, nor did the actual questioning of petitioners point to a subject of inquiry (see especially R. 161-164).

Thus there is no basis for the conclusion indicated by the Court below that there was a clearly defined subject with a clear relation to the Committee's authority from which petitioners could determine the pertinence of the

questions asked them.<sup>1</sup> In the context of the Committee's intention to call "individuals in the field of labor, business and government" (R. 19) with no stated purpose, the calling and questioning of petitioners appeared completely aimless.

Since no subject of inquiry had "been made to appear with undisputable clarity" (*Watkins*, 354 U. S. at p. 214), the subcommittee had an obligation, particularly when petitioners objected that the questions were outside the Committee's functions (R. 24-25, 161-162), to describe clearly the subject under inquiry and the pertinence of the questions. The subcommittee did not carry out this obligation; thus the questions asked petitioners cannot be deemed within the subcommittee's authority and the Court below erred in holding that the subcommittee acted in an authorized manner in its interrogation of petitioners.

In sum, while the Court below interpreted the statute as requiring that the questions the Committee asked petitioners be "authorized" as a matter of Federal law, it erred in concluding that they were so authorized, because the subject under investigation was not apparent; the relation of the questions to the Committee's authority was consequently unclear; and the Committee failed to apprise petitioners, upon their objection, of the subject under inquiry or the pertinence of the questions.

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<sup>1</sup>We are assuming in this argument, but we do not concede, that both petitioners heard the chairman's opening statement. Petitioner Nelson testified four days after the opening session (see R. 16, 21), but he indicated that he was present at the initial session (R. 24). Petitioner Globe testified on the day following the opening session (R. 159), but there is no evidence he was present the preceding day (see R. 159-165).

### Conclusion

For the foregoing reasons, we respectfully submit the judgment of the Court below should be reversed, and the proceedings should be remanded with directions that the California statute and the petitioners' discharges thereunder are invalid, that petitioners should be reinstated in their employment, and that they should receive whatever further relief is appropriate in view of the unconstitutionality and invalidity of their discharges.

Respectfully submitted,

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## APPENDIX

### Additional Constitutional and Statutory Provisions Involved

#### CONSTITUTION OF THE UNITED STATES

Article VI. This Constitution and the laws of the United States which shall be made in pursuance thereof \* \* \* shall be the supreme law of the land \* \* \*.

Amendment I. Congress shall make no law \* \* \* abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V. No person shall \* \* \* be compelled in any criminal case to be a witness against himself \* \* \*.

Amendment XIV. Section 1. \* \* \* No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law \* \* \*.

*Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828) and House Resolution 3 of the 83rd Congress.*

\* \* \* (b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

#### RULE XI

##### POWER AND DUTIES OF COMMITTEES

(1) All proposed legislation, messages, petitions, memorials, and matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively: \* \* \*

17. Committee on Un-American Activities.

(a) Un-American Activities.



(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation \* \* \*

C

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**FILED**

**DEC 24 1959**

**JAMES R. BROWNING, Clerk**

**IN THE  
Supreme Court of the United States**

**October Term, 1959**

**No. 152**

**THOMAS W. NELSON,**

*Petitioner,*

*vs.*

**COUNTY OF LOS ANGELES, et al.,**

*Respondents,*

**ARTHUR GLOBE,**

*Petitioner,*

*vs.*

**COUNTY OF LOS ANGELES, et al.,**

*Respondents,*

**On Writ of Certiorari to the District Court of Appeal of the  
State of California, Second Appellate District,  
Division One.**

**BRIEF FOR RESPONDENTS.**

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IN THE  
**Supreme Court of the United States**

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October Term, 1959

No. 152

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THOMAS W. NELSON,

*Petitioner,*

*vs.*

COUNTY OF LOS ANGELES, *et al.*,

*Respondents,*

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ARTHUR GLOBE,

*vs.*

COUNTY OF LOS ANGELES, *et al.*,

*Respondents,*

---

On Writ of Certiorari to the District Court of Appeal of the  
State of California, Second Appellate District,  
Division One.

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**BRIEF FOR RESPONDENTS.**

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**Citations to Opinions Below.**

The Superior Court of the State of California in and for the County of Los Angeles, in which court *Nelson* and *Globe* originated, issued no formal opinion. However its findings and judgment in each case appears at R. 123-126 (*Nelson*), and R. 179-183 (*Globe*). The opinions of the District Court of Appeal of the State of California in the *Nelson* and *Globe* cases respectively [R.

133, 185] are reported at 163 Cal. App. 2d 607, 329 P. 2d 978 and 163 Cal. App. 2d 595, 329 P. 2d 971. The denial of hearing by the Supreme Court of California, with three judges dissenting, in the *Nelson* and *Globe* cases respectively [R. 159, 214] are reported at 163 Cal. App. 2d 607 at 614, and 163 Cal. App. 2d 595 at 606.

### **Constitutional, Statutory and Charter Provisions and Regulations Involved.**

In addition to the Constitutional and Statutory provisions set forth in the Brief for Petitioners, certain provisions of the Charter of the County of Los Angeles, State of California, and Civil Service Rules for the County of Los Angeles, State of California, are also applicable and are here set forth in relevant part.

*Charter of the County of Los Angeles, State of California:*

#### **Section 34 of Article IX:**

"Sec. 34. The Commission shall prescribe, amend and enforce rules for the classified service, which shall have the force and effect of law; . . .

The rules shall provide:

(7) For a period of probation not to exceed six months before appointment or promotion is made complete, during which period a probationer may be discharged or reduced with the consent of the Commission.

(9) For temporary employment of persons on the eligible list. . . ."

*Civil Service Rules for the County of Los Angeles,  
State of California:*

*"19.07. Probationary Period Following First Ap-  
pointment.*

An employee who has not yet completed his first probationary period may be discharged or reduced in accordance with Rule 19.09 by the appointing power by written notice, served on the employee and copy filed with the Commission, specifying the grounds and the particular facts on which the discharge or reduction is based. Such an employee shall be entitled to answer, explain, or deny the charges in writing within ten business days but shall not be entitled to a hearing, except in case of fraud or of discrimination because of political or religious opinions, racial extraction, or organized labor membership.

*19.09. Consent of Commission.*

If the Commission has consented prior to the filing of an answer by the employee and such answer alleges fraud, or discrimination as above stated, and requests a hearing, the Commission shall immediately set aside its consent. The hearing shall be limited to the question of fraud or discrimination. After such hearing the Commission may consent to the discharge or may order such employee reinstated, and unless such order otherwise provides, it shall be effective as of the date of the discharge or reduction.

No consent need be secured to the discharge or reduction of a temporary or recurrent employee."

### Questions Presented.

Two questions are presented by the *Nelson* and *Globe* cases:

(1) Whether the discharge hearing afforded Nelson was in accordance with the due process guarantee of the Fourteenth Amendment to the United States Constitution?

(2) Whether a temporary county employee is entitled to a hearing regarding his discharge for a violation of Section 1028.1 of the Government Code of the State of California.<sup>1</sup>

### Statement of the Cases.

#### 1. Nelson's Employment Record and Discharge Procedure.

Nelson applied for a position with the County of Los Angeles on March 17, 1952 [R. 56]. He signed the State and County loyalty oaths [R. 108, 114], and on April 1, 1952, was hired by the County of Los Angeles as a social worker with the Department of Charities [R. 107-113].

On June 16, 1953, Nelson became a permanent county employee in the position of medical social worker, a position he held until his discharge on May 2, 1956 [R. 107-113, Find. of Super. Ct., R. 123, 124].

The Board of Supervisors of the County of Los Angeles on February 10, 1952 adopted an order concerning

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<sup>1</sup>Petitioner's Brief asserts an alleged violation of the Federal supremacy principle of Article VI of the Federal Constitution as one of the Questions Presented (Pet. Br. p. 4). This point was not raised in the Petition for Certiorari (Pet. for Hearing, p. 3), and it would seem inappropriate to raise the question at this time. Revised Rules of the Supreme Court 23(1)(c); *General Talking Pictures Corp. v. Western Electric Co.*, 304 U. S. 175, 177-178; *Irvine v. California*, 347 U. S. 128, 129.

personal appearances of certain county employees before the United States Congressional House Un-American Activities Committee. That order made it the duty of every county employee who might be subpoenaed by that Committee to appear before it and to answer certain specifically designated questions relating to the Communist conspiracy. One of these designated questions related to membership of the employee in the Communist Party [R. 101]. Refusal to answer these specific questions was to be considered as insubordination, constituting grounds for discharge [R. 101-102]. This Board order was shortly thereafter superseded by, but is in substance the same as, Section 1028.1 of the Government Code of the State of California. For example, Section 1028.1(d) provides that county employees have the duty to answer questions relating to "present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since October 3, 1945."

The county subsequently adopted the procedure of personally serving a copy of the Board's order of February 19, 1952, on every county employee subpoenaed by the Committee on Un-American Activities of the House of Representatives in order to inform the employee of his duty to testify before the Committee as to this type of question if called before it, and to inform him of his liability to discharge in the event of failure to discharge the duty.

Pursuant to this practice, on April 4, 1956, Nelson was, personally served with a copy of the Board's order of February 19, 1952 [R. 97] and on April 20, 1956 pursuant to a subpoena and accompanied by counsel, Nelson appeared and testified before the Subcommittee of the House Committee [R. 21-107, 114]. After answering a

few preliminary questions concerning his educational background and previous employment [R. 21-24]. Nelson objected to the right of the Subcommittee to ask questions concerning the reasons why he was discharged from previous government employment on the grounds that such questions were outside the Committee's jurisdiction [R. 25, 28, 29]. Thereafter, on the basis of the First and Fifth Amendments of the United States Constitution, Nelson specifically declined to answer, among others, the following questions:

"Were you a member of the Communist Party at any time between 1947 and 1949? That was the period you were in Japan." [R. 26, Find. of Super. Ct. R. 124.]

"Have you at any time been a member of the Communist Party?" [R. 31, Find. of Super. Ct., R. 124].

"Were you a member of the Communist Party between 1951 and '52 when you served as an officer of the State parole system for the State of California?" [R. 36, Find. of Super. Ct., R. 124].

"Are you a member of the Communist Party today?" [R. 38, Find. of Super. Ct., R. 124].

On May 2, 1956, Nelson was notified in writing of his discharge from county service because of his refusal to answer these questions before the Committee on Un-American Activities [R. 114-117, Find. of Super. Ct., R. 124]. This notification advised Nelson that he could request a hearing before the Civil Service Commission on the charges placed against him. Thereafter, on June 11, 1956, at Nelson's request, and as required by law, the Civil Service Commission of the County of Los Angeles held



a hearing on Nelson's discharge. Nelson attended the hearing in person, accompanied by his counsel [R. 1].

The County of Los Angeles, by way of stipulation, offered Nelson's employment record [R. 2-3], evidence of Nelson's receipt of a copy of the order of the Board of Supervisors relative to his duty as a county employee to answer questions before the House Committee on Un-American Activities [R. 3] and evidence of his appearance under subpoena before the House Committee [R. 3]. In addition, the county introduced, by stipulation, the transcript of Nelson's testimony on April 20, 1956, before the House Committee [R. 4-5], and the fact of Nelson's discharge and request for hearing [R. 5]. The County then rested.

On Nelson's behalf, his counsel introduced, by stipulation, Nelson's personnel record and the introductory statement made at the opening of the House Committee hearings [R. 6-7]. Nelson indicated through his counsel that he did not care to offer any evidence or testify before the Commission. He merely wished to have his counsel state his position in regard to his discharge [R. 7]. In response to the hearing chairman's question "Now, you just want to argue?" Nelson's counsel stated: "That is all," [R. 7]. At no time during the hearing did Nelson offer to take the stand in his own behalf and he offered no testimony and no witnesses [R. 5-7].

Thereafter, the Civil Service Commission, on the basis of the evidence before it, concluded that Nelson was guilty of insubordination and guilty of violating Section 1028.1 of the Government Code of the state of California, and that the facts and reasons justified Nelson's discharge [R. 103-106].

## 2. Globe's Employment Record and Discharge Procedure.

On March 28, 1955, Globe was employed as a non-eligible, temporary employee in the position of social worker in the County of Los Angeles Department of Charities [R. 166, 172, Find. of Super. Ct., R. 180]. In that position, Globe became a temporary eligible employee on May 1, 1955 [R. 172, Find. of Super Ct., R. 180], and continued in county employment until his discharge on May 2, 1956 [R. 166, 172, Find. of Super. Ct., R. 180]. In 1955, Globe took the State loyalty oath [R. 167, 176]. Globe became eligible for appointment as a permanent county employee on March 24, 1956 [R. 167, 176]. However at no time did he attain permanent status.

Pursuant to subpoena served on him on April 6, 1956 [R. 166, 172, Find. of Super. Ct. 180], Globe, accompanied by his counsel appeared and testified on April 20, 1956, at a hearing of a subcommittee of the Committee on Un-American Activities of the House of Representatives [R: 166, 172, Find. of Super. Ct., R. 180].<sup>2</sup> After answering a few preliminary questions, regarding his educational experience [R. 160], Globe objected to, but finally answered, questions directed to his past employment record [R. 160-162, 173]. However, Globe refused to answer other questions relating to his personal knowledge of the existence of, and personal membership in, an organization at the University of Southern California known as the John Reid Club of the Communist Party [R. 162-

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<sup>2</sup>It should be noted that the letter sent to Globe notifying him of his discharge, quoted verbatim in the record [R. 177-179], indicates that Globe, prior to his appearance before the Subcommittee, in accordance with established County policy, was personally served with a copy of the Board order of February 19, 1952, which sets forth the duty of county employees to testify before the House Un-American Activities Committee and the liability to discharge in the event of failure to perform their duty [R. 101-102].

163, 173-174]. He also refused to answer the direct question: "Are you a member of the Communist Party now?" [R. 164, 175, Find. of Super. Ct., R. 180]. His refusals to answer these questions were based on the First and Fifth Amendments to the United States Constitution [R. 162-164, 173-175, Find. of Super. Ct., R. 180].

On May 2, 1956, Globe was notified in writing that he was discharged on the grounds that by refusing to answer the question relating to his present membership in the Communist Party he had been guilty of insubordination and of violation of Section 1028.1 of the Government Code of the State of California [R. 177-179; see, Find. of Super. Ct., R. 180]. Upon his discharge Globe requested and was granted a hearing by the County of Los Angeles Civil Service Commission concerning his discharge as is provided by law [R. 167, 176, Find. of Super. Ct., R. 181]. Globe appeared before the Commission on May 29, 1956 and was denied a discharge hearing [R. 167, 176, Find. of Super. Ct., R. 181] on the ground that he was a temporary employee, and as such, not entitled to such a hearing [See, R. 176].

### **3. Proceedings in the Courts Below.**

Nelson and Globe each filed a petition for a writ of mandate in the Superior Court of California, seeking reinstatement [R. 106, 165]. The Superior Court found that Nelson had been discharged in the manner prescribed by law and that he had been given a full and fair hearing on his discharge during the course of which he was given the opportunity to explain his reasons for his refusal to testify before the Subcommittee of the House Committee [R. 125]. Nelson's discharge was upheld and the Superior Court denied the writ [R. 126]. As to Globe, the Superior Court found that, regardless of his status as a

temporary employee, Globe could not be discharged from his employment without being afforded a full hearing as to the sufficiency of his reasons for invoking the First and Fifth Amendments to the United States Constitution while testifying before the Sub-committee of the House Committee [R. 181]. The writ of mandate was therefore granted as to Globe [R. 183].

Both decisions were appealed to the District Court of Appeal [R. 127, 183]. The Court of Appeal upheld the discharge procedures followed in both cases, affirming Nelson's discharge [R. 133-140] and reversing the Superior Court's judgment as to Globe [R. 187-198]. The Court determined that the purpose of Nelson's discharge hearing was to afford him an opportunity to explain his reasons for exercising the privilege against self-incrimination [R. 136-138], thus allowing the county to decide at that point whether the circumstances were such as to warrant dismissal [R. 137].

After reviewing the evidence and the applicable law, the Court of Appeal concluded that Nelson, as a permanent county employee, had been afforded the opportunity for a full hearing on his discharge which due process requires under the case of *Slochower v. Board of Education*, 350 U. S. 551, and *Board of Education v. Mass.*, 47 Cal. 2d 494 [R. 134-138]. Globe, on the other hand, being only a temporary county employee, was held not to be entitled, by law, to a hearing [R. 192-197].

The Court of Appeal considered and rejected arguments by Nelson and Globe that the authorizing resolution of the congressional committee was too broad and vague in view of this Court's decision in *Watkins v. United States*, 354 U. S. 178. *Watkins* was held to be factually dissimilar [R. 139, 198].

The Supreme Court of California, by divided court and without opinion, denied petitions by Nelson and Globe requesting a hearing [R. 159, 214].

### Summary of Argument.

Petitioners would concede, and we agree, that the State has a legitimate and real interest in inquiring into the fitness of its employees for continued public employment. This permissible area of inquiry extends to questions directed at the employee's membership in the Communist Party.

Public employees, much like Caesar's wife, should and must act above suspicion. Correspondingly, when during the course of inquiry they are faced with pertinent questions relative to their fitness to public employment they have the obligation to be candid and cooperative. (Cf. *Beilan v. Board of Education*, 357 U. S. 399 at p. 405.) If the duties of candor and cooperation are present as an underlying basis of the public employer-employee relationship, they are present *a fortiori* where the State makes these duties specific by statute. They have this obligation and duty even though the answers may, under some circumstances, amount to self-incrimination.

We submit that the area of candor and cooperation should not be limited to situations where the questions are posed in the first instance by the immediate governmental employer. The duties of candor and of cooperativeness should properly extend to areas where pertinent inquiry is made by other governmental entities such as the Federal Government. Especially, this is so, where as in the instant cases, the scope of the federal inquiry was announced as being directed at Communist Party activities of individuals in the field of government [R. 19].

Petitioners, as public employees, could not be forced to give answers which may tend to incriminate them but they could validly be required to choose between the exercise of the privilege against self-incrimination and continued public employment. Having elected to exercise the privilege, petitioners cannot now say that they were denied its protection.

As refusal to answer certain pertinent questions is defined by statute as insubordination, the public employer had the duty in the face of the course of conduct taken by petitioners to discharge them "in the manner provided by law."

Petitioner Nelson, subsequent to his discharge for statutory insubordination and violation of the California statute, was afforded a full hearing on his discharge which due process demands. That hearing, held at the request of Nelson, was for the purpose of giving Nelson an opportunity to explain the reason which he has refused to testify before the Federal Committee. The scope of that hearing admittedly was limited but not through any actions of the employer. Nelson, by his refusal to testify or offer any evidence concerning his reasons for his refusal to testify before the House Sub-committee or matters germane thereto, voluntarily limited the scope of the inquiry.

California courts in interpreting the California statute under which Nelson was discharged have indicated that the public employer at the hearing has a discretion to approve the discharge or reinstate the employee. By his own acts, Nelson eliminated the exercise of that discretion, requiring the finding by his employer he was insubordinate and in violation of the California statute.

Globe was not afforded a discharge hearing because none was provided by law. As a temporary employee, he



could be summarily discharged. We submit that the State has broad powers in the discharge of its employees and that there is no arbitrary or unreasonable distinction when a discharge hearing is given permanent employees with tenure while denying such a hearing to temporary employees. Such employees have no vested right to continue in public employment. Globe, by his summary discharge, was therefore not divested of any right. Even conceding that a temporary employee may not be discharged for arbitrary or discriminatory grounds still the point is that Globe was discharged for the violation of his statutory duty to cooperate by answering pertinent inquiries made by a duly authorized Federal Committee. It was the fact that he did not answer, rather than the fact that he exercised a Federal privilege that triggered his discharge.

It has been conclusively established by this Court that the Federal Committee, before whom both Nelson and Globe were summoned, is duly authorized to propound the particular types of questions which petitioners refused to answer [*Barenblatt v. United States*, 360 U. S. 109]. Petitioners had the right under the Fifth Amendment to the United States Constitution to refuse to answer these pertinent inquiries, but, on balance, did not have the right to refuse to answer on the basis of a First Amendment privilege.

There is no evidence in the record that the California statute operates or was used as an instrument of coercion in an effort to curtail the exercise of any constitutional privilege by petitioners. Nor can it be said that the California statute abridges any privilege or immunity of citizens of the United States. If petitioners discharge was not repugnant to the due process clause of the United States Constitution, it did not violate the privilege and immunities clause.

## ARGUMENT.

### POINT I.

**The Discharge of Public Employees for Insubordination Resulting From Refusal to Answer Questions Before a Congressional Committee Under the Claim of the First and Fifth Amendment Privilege Does Not Violate Due Process of Law.**

**Due Process of Law Does Not Prohibit the Discharge of Public Employees Who Refuse to Answer Questions Under the Claim of Privilege.**

Petitioners contend that their discharge pursuant to statute, based on their refusal on constitutional grounds to answer questions asked by a congressional committee is arbitrary and unreasonable. We submit that this argument should be rejected by this Court.

It is settled law that a public employer has the right to make certain inquiries of his employees regarding their fitness for continued employment. In *Steinmetz v. Cal. State Board of Education*, 44 Cal. 2d 816, cert. den. 351 U. S. 915, the California Supreme Court in construing the self-same statute under consideration in the instant cases stated at page 823.

"The statute under which petitioner was dismissed is not rendered invalid by the fact that it requires an employee to answer questions as to his membership in the Communist Party without regard to his knowledge of the nature of the party. Petitioner's discharge was not because of membership in the proscribed organization but because of his refusal to answer questions as to whether or not he held membership in the Communist Party. A governmental body may, of course, make reasonable inquiries into matters pertaining to the fitness of its employees. Loy-

alty on the part of those in public employment is important to orderly and dependable government and is, therefore, relevant to fitness for such employment. (*Pockman v. Leonard*, 39 Cal. 2d 676, 687 [249 P. 2d 267].) An employee's associates, as well as his conduct, are factors which may be considered by a state agency in determining his loyalty, and information on that subject may properly be elicited from him. (*Adler v. Board of Education*, 342 U. S. 485, 492-493 [72 S. Ct. 380, 96 L. Ed. 517, 27 A. L. R. 472]; *Pockman v. Leonard*, 39 Cal. 2d 676, 685-687 [249 P. 2d 267].) In this connection, it has been held that a public employer may constitutionally require its employees to disclose any past or present membership in the Communist Party. (*Garner v. Board of Public Works*, 341 U. S. 716, 720 [71 S. Ct. 909, 95 L. Ed. 1317].)” (*Cf. Beilan v. Board of Public Education*, 357 U. S. 399, and *Lerner v. Casey*, 357 U. S. 468.)

Petitioners, as public employees have certain obligations as well as rights. The right to be selected and appointed for public employment and in due course, the right of tenure in that employment imply concurrent obligations of good citizenship, the performance of employmental duties, and, where required by statute or otherwise, cooperation with governmental bodies making proper inquiries into matters affecting public employment, whether these governmental bodies be local, state or federal. (*Cf. Beilan v. Board of Education*, 357 U. S. 399 at p. 405. In the instant cases the State has been fit to delineate and clarify the extent of these obligations through the use of Section 1028.1 of the Government Code. This was not a duty in the abstract—it is an absolute duty of co-

operation directly imposed by the State on all public employees.

When petitioners obstructed the course of legitimate governmental inquiry they destroyed the facade of confidence which their employer and the public had erected around them. Petitioners directly and knowingly refused to embark on a course of conduct which their employer had every right to expect them to follow. In failing to stay within certain circumscribed bounds of conduct, they were insubordinate as defined in the statute.

It was then the duty of their employer to consider whether by their insubordinate refusal to testify their fitness for further public employment had become impaired. It is at this point that attention must be focused. Petitioners were not dismissed from public employment because they had exercised a legal right to remain silent in the face of legitimate inquiry. They were dismissed because their insubordinate conduct had indicated a lack of those qualities of candor and cooperation that the public and their public employer had every right to expect from them as public employees. Even more than the non-performance of an obligation to explain one's conduct to one's superiors in employment, the refusal to perform a statutory duty is a means of measuring lack of fitness for employment. This not because of any unfavorable inference of disloyalty or misconduct, inferences firmly rejected by the Court below [R. 139, 195 and see, *Konigsberg v. State Bar*, 353 U. S. 252 at p. 270], but because the manifested unwillingness to answer proper questions is in itself the disqualifying fact.

Public employment is a privilege which the State can grant on such terms as it sees fit to impose. When petitioners were first employed, they knew or should have

known that as part of their duties as public employees they would be required if the occasion arose, to respond to a pertinent inquiry by a Congressional Committee. When summoned before the Committee they had a choice between continued public employment and the exercise of the constitutional privilege against self-incrimination.

Petitioners argue that their discharge had no relation to the determination of their fitness for employment because the applicable California loyalty procedure had already been applied to each petitioner.

Obviously, the State does not consider compliance with the State or county loyalty programs sufficient protection for the public. Past pledges or oaths of loyalty are not a sufficient indication of presently held loyalties. The State's manifest responsibility to its citizens requires that public employees stand up and be counted. In addition, public employees have the responsibility to maintain continued fitness for employment because the mere fact of Communist Party membership constitutes grounds for dismissal under Section 1028 of the Government Code<sup>3</sup> and prohibits the holding of public employment under Article XX, Section 19 of the California Constitution.<sup>4</sup>

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<sup>3</sup>Section 1028 of the Government Code provides:

"It shall be sufficient cause for the dismissal of any public employee when such public employee advocates or is knowingly a member of the Communist Party or of an organization which during the time of his membership he knows advocates overthrow of the Government of the United States or of any state by force or violence."

<sup>4</sup>Article XX, Section 19 of the California Constitution, so far as material, provides:

"Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support

**Slochower v. Board of Education, 350 U. S. 551 Does Not Prohibit a Discharge Based on Refusals to Answer Before a Congressional Committee.**

In their constitutional argument, petitioners rely on *Slochower v. Board of Education*, 350 U. S. 551 as indicating that a discharge based on events occurring before a congressional committee is in itself arbitrary and unconstitutional. Slochower, a teacher in a public college in New York City refused to testify before the Internal Securities Subcommittee of the United States Senate when asked whether he had been a member of the Communist Party prior to 1941. He invoked the privilege of the Fifth Amendment. As a teacher in New York City, he was subject to Section 903 of the New York City Charter which provided that any city employee who utilized the privilege against self-incrimination to avoid answering a question relating to his official conduct should thereby have his tenure of office or employment automatically terminated. Slochower was discharged summarily without a hearing under this provision. This Court held that such a *summary* dismissal violated due process of law and remanded the case for further proceedings not inconsistent with its opinion.

The specific ground for setting aside Slochower's dismissal was the summary character of the discharge under the New York City Charter provision which made the act of claiming the privilege against self-incrimination operative *ipso facto* to discharge the employee without a hearing.

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of a foreign government against the United States in the event of hostilities shall:

"(a) Hold any office or employment under this State, including but not limited to the University of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State; \* \* \*"



As indicated above, the fundamental reason for petitioners' discharge was the fact of their refusal to testify and not their grounds for refusing. Their silence, their secrecy, their evasiveness made them by their own acts unfit to hold public employment. (Cf. dissenting opinion of Mr. Justice Reed in *Slochower v. Board of Education*, 350 U. S. 551 at 561-562.)

In *Lerner v. Casey*, 357 U. S. 468, this Court indicated that a teacher could be dismissed for incompetency for refusing to answer questions although the teacher had invoked the privilege against self-incrimination as an explanation for his silence. We submit that a Constitutional distinction should not be drawn based on where or to whom the refusal to answer is expressed provided the inquiry is a pertinent one and made in the course of legitimate investigation.

In *Slochower* this Court remanded the case for further proceedings in accordance with its opinion. If this Court had wished to make the point that dismissal from public employment could never be based on a refusal to answer pertinent questions propounded by a congressional committee, the proceedings against *Slochower* would have been dismissed. We submit that *Slochower* does not reach this far. The constitutional validity of discharge from public employment for refusal to answer legitimate questions does not and should not depend on whether the refusal occurred in a local, State or Federal proceeding.

The crux of this problem is pointed out in Mr. Justice Frankfurter's concurring opinion in *Lerner v. Casey* where he states (357 U. S. at p. 410):

"The services of two public employees have been terminated because of their refusals to answer questions relevant, or not obviously irrelevant, to an in-

quiry by their supervisors into their dependability. When these two employees were discharged, they were not labeled 'disloyal.' They were discharged because governmental authorities, like other employers, sought to satisfy themselves of the dependability of employees in relation to their duties. Accordingly, they made inquiries that, it is not contradicted, could in and of themselves be made. These inquiries were balked. The services of the employees were thereby terminated."

We submit that the State as an employer has as much right to require by statute, under pain of dismissal, that the public employee answer legitimate inquiries made by the congressional committee affecting their continued fitness for public employment as it has the right to require that they answer proper and pertinent inquiries directly made by their employer.

## POINT II.

### **The Discharge Procedure Accorded Nelson Met All the Requirements of Due Process of Law.**

Petitioner Nelson argues that assuming that his discharge pursuant to statute was not arbitrary or unreasonable still he was not accorded the hearing upon his discharge which due process requires. In *Slochower, supra*, 350 U. S. 551, this Court struck down the summary dismissal of a public employee pursuant to a statute which operated to discharge *eo instante* every employee with tenure who invoked the Fifth Amendment. The summary dismissal violated due process because no consideration was given to such factors as the subject matter of the questions, remoteness of the period to which they are directed, justification for the exercise of the privilege or

whether the plea resulted from mistake, inadvertence, or legal advice conscientiously given, whether wisely or unwisely.

The hearing given Nelson before the Civil Service Commission was contained within the shape of the mold created by *Slochow*. Section 1028.1 limits the scope of the duty to answer questions to certain questions involving only one subject matter. Further, the period to which such questions were to be directed is the present not the indefinite past. Thus, two of the factors involved in *Slochow* were eliminated at once from *Nelson*. Additionally, petitioner was given every opportunity to justify his exercise of the privilege. Accordingly the dictates of *Slochow* were conformed with and petitioner had exactly the full scale hearing required by due process.

Nelson argues that the invocation of his constitutional rights was the conclusive reason under the State statute, for his discharge. He asserts that the hearing afforded him was merely *pro forma* in that, in any event and no matter what the weight of evidence marshalled for his defense, he would have been discharged. Not so. The Court below stressed the fact that the California Supreme Court does not accept this strict interpretation of the California statute. The public employer at the hearing has a discretion which may be exercised if the employees' reasons for refusing to comply with his statutory duty to answer are deemed sufficient. As the Court below stated: "For what purpose would the Supreme Court insist on a full hearing to give the employee an opportunity to explain his reasons if the statute required a dismissal regardless of his explanation for refusing to answer?" [R. 137-138]. We submit that this Court is bound by this interpretation given the California statute, *Beilan v.*

*Board of Public Education*, 357 U. S. 390, 404; *Barsky v. Board of Regents*, 347 U. S. 442, 448.

Any contention that Nelson did not know the purpose of his discharge hearing is not sustained by the facts. The record clearly indicates that Nelson received a letter from his employer notifying him of his discharge on the grounds of insubordination and of violation of Section 1028.1 of the Government Code [R. 115-116]. In that letter Nelson was specifically advised that he could request a hearing on these charges [R. 118]. Nelson cannot now state that he did not know the purpose of the very hearing which he requested be held. The hearing was called for the purpose of giving Nelson an opportunity to explain his conduct—the reasons why he refused to answer questions asked of him by a congressional committee.

It is submitted that at the hearing Nelson received all the requisites of a "fair trial" which due process requires. Such requisites include: reasonable notice of the charges; *In re Oliver*, 333 U. S. 257; *United States v. Cruikshank*, 92 U. S. 542; the right to a hearing; *Shields v. Utah Idaho R. Co.*, 305 U. S. 177; *Palko v. Connecticut*, 302 U. S. 319; an opportunity to examine the evidence and to cross-examine witnesses supporting the charges, to offer testimony on one's own behalf, and to be represented by counsel; *In re Oliver*, *supra*; *Motes v. United States*, 178 U. S. 458, *Int. Com. Comm. v. Louis. & Nash. R.R.*; 227 U. S. 88.

The record is clear that Nelson at his hearing was afforded all the fundamental safeguards necessary to assure a just and fair consideration of his case. If in fact the scope of the hearing was circumscribed it was so bounded by his own actions. As the Court below stated,

"Any argument that the county should have questioned petitioner about his reasons for invoking the

privilege is specious. The record discloses that he was given every opportunity to explain if he wished to do so and 'an opportunity to explain' does not imply that the county must illicit the information from the employee. Whether his explanation comes through query of the employer or the employee's own counsel would seem immaterial as long as the employee is given a full hearing in which he is given an opportunity to explain his reasons. The hearing is for the purpose of giving him the opportunity to explain. If he chooses to remain silent and not do so, he cannot now say he has been denied due process. If petitioners hearing was limited in any way, it was limited by his own voluntary choice to remain silent." [R. 138].

Lastly the implication that the loss of his position in public employment is a permanent deprivation of his means of livelihood and is improper under the circumstances, is unwarranted. It should be noted that the statute involved in *Slochowec, supra*, unlike the statute involved here, by its very terms provided that city employees would be permanently disqualified from "election or appointment to any office or employment under the city or any agency." The California statute nowhere goes to this extreme and in actual practice on the local level, at least discharge from previous government employment obviously does not bar further public employment. Nelson, in point of fact, despite notifying the County of Los Angeles of his two previous discharges from governmental employ [R. 63] was still able to secure further public employment.

To intimate that it is improper to impose a civil penalty for exercise of a constitutional right is not war-

ranted. Mr. Justice Holmes stated the correct principle in his frequently quoted statement in *McAuliffe v. New Bedford*, 155 Mass. 216:

"The petitioner may have a constitutional right to talk politics but he has no constitutional right to be a policeman."

And compare *Lerner v. Casey*, 357 U. S. 468, where this Court sustained the dismissal of a public employee for failure to answer pertinent questions under a claim of the privilege against self-incrimination.

### POINT III.

#### **Due Process Does Not Require That Temporary Public Employees Must Be Afforded the Same Discharge Hearing That Is Afforded Public Employees With Tenure.**

Petitioner Globe's attempts to equate his constitutional arguments with those of Nelson ignore the very essence of the difference between temporary public employees and those with tenure under the Los Angeles County Charter (Sec. 34, Art. IX) and the Rules of the Los Angeles County Civil Service Commission (Secs. 19.07 and 19.09).

As a temporary employee, Globe had none of the vested rights of permanency and could be summarily discharged. Due process does not require a hearing where one is not being deprived or divested of anything to which he has a right. (Cf. *Bailey v. Richardson*, 182 F. 2d 46, aff'd 341 U. S. 918; *Friedman v. Schweellenbach*, 159 F. 2d 22). Petitioners' reliance on *Slochower* is misplaced since Slochower was a permanent employee and entitled to tenure under the applicable New York state law. Here Globe was only in the status of an applicant for public employ-



ment. To argue that a person with such a tenuous hold on the public rolls has a vested right to such employment is to allow privilege and to destroy the importance of tenure.

Even if a vested right were involved, due process does not always require a hearing. (*Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123 at p. 162.)

*Slochower* indicates that individuals may not have a constitutional right to public employment.

"To state that a person does not have a constitutional right to government employment is only to say that he must comply with reasonable, lawful, and non-discriminatory terms laid down by the proper authorities." (350 U. S. at p. 555).

This Court has not yet made the broad assertion attributed to it by *Globe* that there is no real difference between permanent and temporary employees with respect to their methods of discharge. To the contrary we submit that there is a very real and substantial difference.

Even conceding, *arguendo*, that *Globe* may not be discharged summarily for arbitrary or discriminatory reasons, we have shown above that his discharge was not arbitrary and that it related to a real interest of the State in informing itself as to the continued fitness of its employees for further public service. *Globe* was discharged for the failure to perform a specific statutory duty—the duty to answer legitimate and pertinent inquiries made by a governmental body relating to activities which if found to be present could lead to dismissal (*Cf.* Sec. 1028, Govt. Code; Art. XX, Sec. 19 of the State Constitution). In failing to perform this statutory duty, *Globe* was insubordinate and showed himself to be unfit for

further public employment. His dismissal was therefore not patently arbitrary or discriminatory. The controlling provisions of the County Charter and the Civil Service Rules do not permit a hearing to persons in Globe's status except in certain specific instances such as a claim of discrimination because of political or religious opinion, racial extraction or organized labor membership. Since no such claim was made by Globe, no right to a hearing was present.

Any argument that Globe would be penalized in his search for future employment because he was discharged because of an inference of disloyalty is without foundation in the record. The Court below made clear that any implication of guilt for invoking the privilege against self-incrimination was not involved in the discharge and was not material [R. 195].

#### POINT IV.

#### **The Questions Asked of Nelson and Globe by the Committee Were Pertinent to the Subject Matter of the Investigation.**

In the Court below, petitioners, relying on *Watkins v. United States*, 354 U. S. 178, contended that the Congressional Committee was not duly authorized for the reason that the authorizing resolution was too broad and vague in its terminology which empowered the committee to investigate un-American and subversive activities [R. 139, 198].

Petitioners apparently have abandoned this tack in view of the recent holding of this Court that Rule XI under which the Committee operated is not "constitutionally infirm on the score of vagueness." (*Barenblatt v. United States*, 360 U. S. 109 at pp. 122-123.) There can be no doubt now but that the Subcommittee of the House Un-

American Activities Committee, before whom petitioners appeared was "duly authorized" and as such had the authority to compel testimony.

Petitioners now lean on *Watkins* regarding the pertinency of the questions asked by the committee.

We understand *Watkins* to teach that a conviction for contempt under 2 U. S. C., sec. 192 cannot stand unless the questions asked are pertinent to the subject matter of the investigation. (*Watkins v. United States*, 354 U. S. 178, at pp. 214-215; *Barenblatt v. United States*, 360 U. S. 109, at p. 123).

Preliminarily a major difference between *Watkins* and the instant cases is apparent. *Watkins* was prosecuted for contempt under a criminal statute because of his refusal to testify before the Subcommittee. Petitioners however were not faced with any criminal sanctions for their refusals to testify. Dismissal pursuant to Section 1028.1 of the Government Code is not a penal action, and discharge is not a criminal sanction. (*Bailey v. Richardson*, 182 F. 2d 46.)

Further, *Watkins* had a difficult choice when faced with the necessity of answering questions. Since 2 U. S. C. sec. 192 is a criminal statute, *Watkins* had the right to have available through a sufficiently revealing statute, information indicating the standard of criminality to which he would be held. Because this statute defines the crime as refusal to answer "any question pertinent to the question under inquiry," part of the standard of criminality is the pertinency of the questions propounded. According to this Court, this standard requires a witness confronted with a particular question to pre-guess at his peril, the court's subsequent ruling on its pertinency.

Faced with this problem of choice, Watkins was entitled to know the pertinency of the questions to the subject matter. "That knowledge must be available with the same degree of explicitness and clarity that the due process clause requires in the expression of any element of a criminal offense." (*Watkins*, *supra*, 354 U. S. at p. 209; *Cf. Scull v. Virginia*, 359 U. S. 344).

At the outset, this problem did not confront petitioners since the questions asked them were not amorphous on their face. Nelson, for example, refused to answer the question:

"Are you a member of the Communist Party today?" [R. 38, Find. of Super. Ct., R. 124].

Globe also refused to answer this particular question [R. 164, 175]. Petitioners were not impaired on the *Watkins* dilemma because refusal to answer this particular question is specifically made a ground for dismissal under Section 1028.1(d) of the Government Code of California. Therefore, at the time the questions were propounded to them petitioners were aware, beyond doubt, of their pertinency.

Assuming, *arguendo*, that although absent the criminal aspects of *Watkins*, the principle of that case is applicable in the instant cases, we submit that the Court below was correct in its view that the questions asked were pertinent.

An examination of the record discloses with "undisputable clarity" the pertinency of the questions propounded by the committee. Nelson, at the very least, was well aware of the "topic under discussion," since he indicated by his remarks at the hearing that he had been present at the opening session of the Committee and had

heard the Chairman's introductory remarks [R. 24, 42].<sup>6</sup> These remarks consisted of statements of the Committee's function and purpose [R. 17-18] and statements concerning the subject matter under inquiry. Concerning the latter, the Chairman stated:

"In the course of this investigation Communist Party activities of other individuals in the field of labor, business and government have come to the attention of the staff, and will also be the subject of investigation and of this hearing.

The committee took extensive testimony in Chicago during December of 1955, and in the city of Washington in February and March, relating to Communist Party activities of employees in various agencies of the United States Government. During the course of these hearings testimony was received divulging the existence of heretofore undisclosed Communist Party cells which operated in various government agencies at various locations throughout the country.

"There will be heard before the conclusion of these hearings, certain witnesses whose identity was disclosed during the course of the above hearings." [R. 19-20].

Having this source of information available to him, Nelson cannot now say that he was not aware of the Subcommittee's authority and purpose to question him as it did.

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<sup>6</sup>While Globe testified the day after the opening session, the record does not indicate that he was actually present at the first session and heard the opening remarks [R. 159, 156]. Therefore, we do not argue that Globe knew from personal knowledge of this source of information.

Additionally, in both *Nelson* and *Globe*, other sources of information were available to petitioners by which pertinency can be gleaned. The authorizing resolution in light of this Court's decision in *Barenblatt, supra*, cannot be said to be so vague *per se* as to be unenlightening to petitioners on the score of pertinency.

Further, it is apparent that the very questions both petitioners refused to answer related to their own Communist Party affiliations, questions "whose pertinency of course were clear beyond doubt." (*Barenblatt v. United States*, 360 U. S. at p. 125, *Cf. Watkins v. United States*, 354 U. S. at pp. 182-185).

The record in the instant cases, we submit, clearly shows the presence of many of the sources of information which *Watkins* requires. These sources made the subject of the inquiry by the Committee quite clear at the time the questions were propounded. Therefore, it would appear that the duty of the committee to explain pertinency in the face of a pertinency objection did not arise (*Cf. Barenblatt v. United States*, 360 U. S. at p. 124).

However while we feel that these multiple sources of information leave no room for a pertinency objection, still the responses of the Committee's members when faced with such an objection in *Nelson* were more than adequate to fulfill any reciprocal obligation to explain pertinency. For example, faced with Nelson's pertinency objection, Representative Donald L. Jackson explained:

"If the Congress of the United States, or any of its committees, does not have the right to legislate with respect to federal employees, or to make inquiry into matters concerning federal employees, past or present, who are members or have been members



of the Communist Party, then there is certainly something very awry as far as the investigating power of the Congress is concerned.

This is one area in which there should be absolutely no question as to the jurisdiction of the Congress.

The Congress would be derelict indeed if it permitted a situation to go unnoticed in which there were past or present members of the Communist Party employed, especially in light of the action of the Congress of the United States in outlawing the Communist Party." [R. 27].

Nelson, of course was a former employee of the Federal Government [R. 47, 57, 63].

As well, the remarks of Congressman Clyde Doyle [R. 38-43] amply illuminate the pertinency of the questions propounded to Nelson.

#### **POINT V.**

**Petitioners Did Not Have the Right to Assert the Protection of the First Amendment to Forestall Pertinent Inquiry by the Sub-Committee as to Petitioners' Membership in the Communist Party.**

Before a duly authorized Sub-Committee of the House Committee on Un-American Activities, petitioners refused to answer questions relating to their past and present membership in the Communist Party. Their refusals to answer were premised on the First Amendment, supplemented by the Fifth Amendment to the Constitution of the United States.

Admittedly, where First Amendment rights are asserted to prevent inquiry by the Government, "resolution of the issue always involves a balancing by the

courts of all competing, private and public interests at stake in the particular circumstances shown" (*Barenblatt v. United States*, 360 U. S. at p. 126).

That reliance on the First Amendment privilege before a Sub-Committee inquiring as to Communist Party affiliations is misplaced was pointed out in *Barenblatt, supra*. There, that precise issue was before this Court. *Barenblatt* indicates that, on balance, the governmental interests at stake in the Sub-Committee's investigation are greater than individual interests, and that therefore the provisions of the First Amendment cannot be said to have been offended when questions concerning the individuals Communist Party affiliations are propounded.

Clearly, then, irrespective of their rights under the Fifth Amendment, petitioners did not have a right to resist on the basis of the First Amendment, pertinent inquiry by a duly authorized Sub-Committee as to their associational relationships.

#### POINT VI.

**The California Statute Does Not Operate as a Bar or Prohibit the Exercise of Constitutional Privileges nor Was It the Purpose of the Statute to Coerce Testimony Before the Federal Committee.**

Petitioners claim that the State statute in its effect as well as its purpose was to coerce testimony before the Federal Committee and was created to curtail the free exercise of the First and Fifth Amendment Rights.

Since we have previously pointed out that this Court has indicated that an individual's right to refuse to testify before a Federal Committee on the basis of the First Amendment is subordinate to the rights of the Federal

Committee to compel such testimony, (*Barentblatt v. United States*, 360 U. S. 109), we limit our reply to the claimed abridgement of Fifth Amendment rights.

The Court below firmly pointed out that the California statute does not operate to bar or prohibit the exercise of the privilege against self-incrimination.

"Any point raised by petitioner that the statutory requirements of section 1028.1 bar or prohibit his privilege of self-incrimination has heretofore been decided by the Supreme Court in the case of *Steinmetz v. Cal. State Board of Education*, 44 Cal. 2d 816. The court said, at page 824: 'Moreover, a person may properly be required to disclose information relevant to fitness and loyalty as a reasonable condition for obtaining or retaining public employment, even though the disclosure under some circumstances may amount to self-incrimination. (Citations). A public employee, of course, cannot be forced to give an answer which may tend to incriminate him, but he may be required to choose between disclosing information and losing his employment.' " [R. 135-136].

In tracing the history of the privilege against self-incrimination this Court stated in *Knapp v. Schweitzer*, 357 U. S. 371 at pp. 379-380:

"In construing the Fifth Amendment and its privilege against self-incrimination, one must keep in mind its essential quality as a restraint upon compulsion of testimony by the newly organized Federal Government at which the Bill of Rights was directed, and not as a general declaration of policy against compelling testimony. It is plain that the amendment can no more be thought of as restrict-

ing action by the States than as restricting the conduct of private citizens. The sole—although deeply valuable—purposes of the Fifth Amendment privilege against self-incrimination is the security of the individual against the exertion of the power of the Federal Government to compel incriminating testimony with a view to enabling that same Government to convict a man of his own mouth." (Emphasis ours).

The assertion that the purpose of the California statute was to coerce petitioners into testifying before a Federal Committee has no basis in fact. We submit that the record is barren of evidence that the State statute was used as an instrument of compulsion of testimony. In point of fact petitioners' rights to assert the privilege of self-incrimination was scrupulously recognized and guarded. The statute was not the basis of Federal prosecution or investigation nor is that a scintilla of evidence of any collaboration between Federal, local or State agencies or offices. (*Cf. Knapp v. Schweitzer*, 357 U. S. 371, 380). Petitioners were dismissed quite independently of their exercise of a Constitutional privilege.

#### POINT VII.

#### **The California Statute Does Not Act to Abridge a Privilege or Immunity Protected by the Fourteenth Amendment.**

In the Court below, petitioners relied on, and the Court discussed, the application of the due process clause of the Fourteenth Amendment to petitioners' cases. Independent of that reliance petitioners now argue for the first time in this forum that the California statute abridges the

privileges and immunities clause of the Fourteenth Amendment.<sup>6</sup>

Before the Federal Committee, petitioners elected to exercise their privileges against self-incrimination. The validity of this exercise was recognized on all levels of the Federal and local proceedings. Having which exercised the privileges, petitioners cannot now maintain they were deprived of it.

Petitioners were dismissed not because of the exercise of constitutional rights but because of the mere fact of their refusal to answer. Therefore, the question of curtailment of a constitutional privilege is academic. Further, petitioners cannot rely on the "privileges or immunities" clause, because the only thing that has been taken away from them was their public employment.

We submit that petitioners argument that the Fifth Amendment privilege must be deemed part of "privileges and immunity of citizens of the United States" is too broad in its scope and ignores the narrow interpretations of the "Privileges or Immunities" clause by this Court.

In the *Slaughterhouse Cases*, 16 Wall. 36, this Court defined the nature of the Privileges and Immunities pro-

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<sup>6</sup>Petitioners did not raise this point in, nor was it considered by the State Court. The question of the applicability of the "privileges and immunities" clause was raised by the petitioners for the first time in their Petition for Certiorari. We respectfully submit therefore that this Court need not pass upon this question. Cf. *Wilson v. Cook*, 327 U. S. 474 where this Court stated at page 483:

"In reviewing the judgment of a state court, this Court will not pass upon any federal question not shown by the record to have been raised in the state court or considered there, whether it be one arising out of a different or the same clause in the Constitution with respect to which other questions are properly presented."

tected by the Fourteenth Amendment. It was pointed out that the Privileges and Immunities guaranteed by the clause are those of citizens of the United States as distinguished from those of citizens of the States. It was not the purpose of the American Constitution to transfer the protection of fundamental rights from the States to the Federal Government. As noted by this Court in *Knapp v. Schweitzer*, 357 U. S. 371 at p. 374 (footnote No. 1):

"No force or validity is added to petitioner's argument by the invocation of the Supremacy Clause, Art. VI, cl. 2, and the Privileges and Immunities Clause of the Fourteenth Amendment. Whatever the applicability of the Fifth Amendment, it is in no way expanded by those two provisions. Cf. *Twinning v. New Jersey*, *supra*, at 90: '[T]he exemption from compulsory self-incrimination is not a privilege or immunity of National citizenship. . . .'

Petitioners claim that assuming they validly invoked a Federal privilege in a Federal proceeding, subsequent dismissal from public employment abridges their privileges and immunities as citizens of the United States.

But this argument blurs the distinction between petitioners immunity from self-incrimination under the Federal Constitution and their "privilege" of being public employees. This latter "privilege" is not one that adheres in them as citizens of the United States but is one created solely by the State.



*Hamilton, et al. v. Regents of University of California*, 293 U. S. 245, supplies the distinction. This Court stated there at 261-262:

"The clauses of the Fourteenth Amendment invoked by appellants declare: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law.' Appellants' contentions are that the enforcement of the order prescribing instruction in military science and tactics abridges some privilege or immunity covered by the first clause and deprives of liberty safeguarded by the second. The 'privileges and immunities' protected are only those that belong to citizens of the United States as distinguished from citizens of the States—those that arise from the Constitution and laws of the United States as contrasted with those that spring from other sources. (Citations). Appellants assert—unquestionably in good faith—that all war, preparation for war, and the training required by the university, are repugnant to the tenets and discipline of their church, to their religion and to their consciences. The 'privilege' of attending the university as a student comes not from federal sources but is given by the State. It is not within the asserted protection. The only 'immunity' claimed by these students is freedom from obligation to comply with the rule prescribing military training. But that 'immunity' cannot be regarded as not within, or as distinguishable from, the 'liberty' of which they claim to have been deprived by the enforcement of the regents' order. If the regents'

order is not repugnant to the due process clause, then it does not violate the privileges and immunities clause."

It is submitted that the privilege of working for the County of Los Angeles comes not from Federal sources but from the State and local government and as such is not within the asserted protection of the Privileges and Immunities Clause of the Fourteenth Amendment.

As pointed out above, where this Court has accorded Constitutional protection to public employment, such protection is fused solely onto the due process clause of the Fourteenth Amendment and not the privilege and immunities clause. This protection prohibits dismissal from employment pursuant to a statute on patently arbitrary or discriminatory grounds. (*Slochower v. Board of Education*, 350 U. S. 551; *Wieman v. Updegraff*, 344 U. S. 183).

Since it is not arbitrary to dismiss a public employee who validly claimed the state privilege against self-incrimination, *Lerner v. Casey*, 357 U. S. 68, we submit that it is no more arbitrary to dismiss an employee who has claimed a valid privilege in a Federal proceeding. As petitioners' discharges are not repugnant to the due process clause, they do not violate the privilege and immunities clause.

### Conclusion.

It is therefore submitted that petitioners were properly discharged from their public employment for insubordination and a violation of Section 1028.1 of the Government Code of the State of California, and that the decision of the Court below upholding their discharges should be affirmed.

Respectfully submitted,

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IN THE  
**Supreme Court of the United States**

**October Term, 1959**

**No. 152**

THOMAS W. NELSON,

*Petitioner,*

—v.—

COUNTY OF LOS ANGELES, ET AL.,

*Respondents,*

ARTHUR GLOBE,

*Petitioner,*

—v.—

COUNTY OF LOS ANGELES, ET AL.,

*Respondents,*

On Writs of Cartiorari to the District Court of Appeal of the  
State of California, Second Appellate District, Division One

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**REPLY BRIEF FOR PETITIONERS**

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**On Writs of Certiorari to the District Court of Appeal of the  
State of California, Second Appellate District, Division One**

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**REPLY BRIEF FOR PETITIONERS**

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1. The primary issue in this case is whether the California statute, as here applied to petitioners, provided for their discharge from their employment by the County of Los Angeles on an arbitrary ground.

Respondents misstate the issue when they elevate to primary position in this case the question of the character of the hearing accorded petitioner Nelson by the County Civil Service Commission and the question of whether peti-

tioner Globe should have been accorded such a hearing (Resp. Br., p. 4). While the court of original jurisdiction invalidated Globe's discharge on the ground that he had not been accorded a hearing, petitioners have at no time bottomed their argument that the discharges are unconstitutional on the nature of the hearing in Nelson's case or its absence in Globe's.<sup>1</sup>

Both petitioners were discharged, pursuant to a California statute, for their refusals on grounds of the First and Fifth Amendments to answer questions in appearances before the Committee on Un-American Activities of the House of Representatives (Petr. Opening Br., pp. 13-14). The primary issue is whether the California court's justification of the discharges on the grounds of the State's interest in determining the loyalty of its employees (R. 136, 139-40, 190, 191-2) is arbitrary, considering that petitioners' refusals to answer occurred before a Federal body which was not empowered or seeking to determine the fitness of local government employees; considering that the County effected the discharges on the bare basis of the refusals without considering its own elaborate loyalty program and petitioners' compliance with it (Petr. Br., pp. 16-17); and considering that the discharges interfered with the assertion of Federal Constitutional rights before a Federal body.

**2. Petitioners' discharges cannot be justified on the basis of the State's interest in determining fitness of its employees or any other basis suggested by respondents (Reply to Respondents' Point I).**

Respondents attempt to support the discharges in part on the basis adopted by the Court below, that the State has a legitimate interest in determining the loyalty of its em-

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<sup>1</sup> See R. 10-11, 109, 131-2, 141-9, 168-9, 202-9; Petition to this Court for Writ of Certiorari, pp. 12-14, with reference to briefs filed in California courts, and p. 3, *Questions Presented; Questions Presented*, Petitioners' Opening Brief, p. 4.

ployees. In doing so respondents, like the Court below, argue as if the County had been conducting an investigation of petitioners in which they refused to give information (Resp. Br., pp. 14-15). When, on the contrary, the refusals in fact occurred before a Federal body which was not even empowered to determine the fitness of local employees, and when in fact the State did not even consider the employees' compliance with its own loyalty program or whether there was any deficiency in it before discharging them for the Federal refusal, their discharges cannot be deemed reasonably related to the State's need to determine fitness (see Petr. Br., pp. 16-17).

Respondents attempt to inject an additional basis of justification for the discharges which has never before been suggested—that the petitioners' invocation of their Constitutional rights and refusals to answer before the House Committee destroy confidence in public employees (Resp. Br., p. 16).

But it is the judgment of the California court, presenting the issue of whether petitioners' discharges are constitutional on the ground of the State's interest in determining loyalty,<sup>2</sup> which is before this Court for review.

Further, there is a clear answer to respondents' argument: it assumes disrespect for Federal Constitutional rights. Here the refusals were on Federal Constitutional grounds before a body which was not charged with determining the fitness of local governmental employees. Respondents' argument that petitioners' refusals under these circumstances cause a loss of confidence and that they therefore can be discharged, would permit the State to stimulate a vicious circle. For a lack of confidence in employees

<sup>2</sup> The Court below adopted this ground rather than lack of confidence, even though this Court's *Beilan* decision, stressing the requirement of candor by the employee to the employer, was brought to its attention (R. 130-2).

who invoke their Federal Constitutional rights would result if the State can discharge employees for such invocation. It is such discharges which indicate to the public that assertion of these rights should not be regarded in good faith, and should instead be attributed to a purpose to conceal and viewed with suspicion.

In any event, an interest which has only a shadowy and speculative connection with the discharges—so speculative that it did not even occur to either of the California courts—is insufficient to justify discharges which inflict a substantial deprivation on petitioners,<sup>3</sup> abridge First Amendment freedoms (see Petr. Br., p. 31), and—perhaps most important,—interfere with the assertion of Federal Constitutional rights.

Such an interference has not been countenanced by this Court. See *Lerner v. Casey*, 357 U. S. 468, at p. 479; *Beilan v. Board of Education*, 357 U. S. 399, at p. 405. Respondents overlook an important factor in this Court's *Lerner* decision (see Resp. Br., p. 19). There the Court said: "The federal privilege against self-incrimination was not available to appellant \* \* \* in this state investigation. \* \* \* Hence we are not here concerned with the protection, as a matter of policy or Constitutional requirement, to be accorded persons who under similar circumstances, in a Federal inquiry, validly invoke the Federal privileges." (357 U. S. at pp. 478-9).

This Court has rejected over and over again respondents' statement and implication from the *McAuliffe* dictum

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<sup>3</sup> Respondents deprecate the seriousness of petitioners' deprivation on the basis that they may not be permanently barred from employment (Brief, p. 23). While the termination of one's present means of livelihood is in itself a serious deprivation, it may also be noted that both the City and County of Los Angeles have rules against hiring of persons previously discharged from public employment (see Rule 7.04(g) of the Los Angeles County Civil Service Commission and Section 3.5(f) of Rules and Regulations of the Board of Civil Service Commissioners of the City of Los Angeles).

(Resp. Br., pp. 16, 24) that the State is free to condition public employment on whatever terms it chooses. See *United Public Workers v. Mitchell*, 330 U. S. 75, 100; *Garner v. Los Angeles Board*, 341 U. S. 716; *Wieman v. Updegraff*, 344 U. S. 183; *Slochower v. Board of Education*, 350 U. S. 551. The established doctrine that the State cannot condition the grant of privileges on the waiver or suppression of Federal Constitutional rights (see Petr. Br., pp. 28-30) is here applicable; respondents have shown no justification for disregarding it. The State cannot so expand the concept of the employee's duties as to abrogate his Federal rights.

### **3. The Civil Service Commission hearing accorded petitioner Nelson did not meet the requirements of due process (Reply to Respondents' Point II).**

Respondents argue that Nelson's discharge met the requirements of due process because he was given a hearing at which he could have explained the reasons for his refusals to answer before the House committee (Resp. Br., p. 21). Assuming *arguendo* that the hearing is in issue in considering the validity of petitioner's discharge (see Petr. Br., p. 14), we have shown that it could not in any event be deemed to accord with due process because petitioner was given no notification of his duty at such hearing; of what charges, if any, he was to answer; or of how he could defend himself (see Petr. Br., pp. 20-23). Respondents continue to refer to petitioner as "refusing" to explain his "reasons" (Br., pp. 12, 22), whereas in fact he was never informed that he had this duty. Indeed even in respondents' after-the-event discussion of the hearing, they still give no indication of what petitioner Nelson was supposed to do there. Apparently referring to some reasons other than petitioners' constitutional objections, they still leave us in the dark as to what type of reasons an employee should produce in his defense. Even at this late date, there is no indication of how petitioner Nelson could have pro-

tested himself at the hearing, besides introducing as he did his personnel record, which included data on the loyalty investigation undertaken of him by the County of Los Angeles, and the opening statement of the chairman of the House subcommittee.

**4. Petitioner Globe is protected by the due process clause against deprivation of employment on an arbitrary ground, regardless of his temporary status under the Civil Service regulations (Reply to Respondents' Point III).**

Petitioners have not argued, as respondents would have it (Resp. Br., p. 24), that the County must use the same procedure in discharging a temporary as a permanent employee. As we pointed out above (*supra*, p. 2), whether or not petitioner Globe was accorded a hearing is not the issue here.

In Globe's case, like Nelson's, the issue is whether discharge for refusal on Federal Constitutional grounds to answer questions before a Congressional committee can be justified in terms of the State's interest in determining the loyalty of its employees (see opinion of Court below R. 190, 194-2; Resp. Br., p. 25). We maintain, contrary to respondents, that due process affords petitioner Globe protection against the State's depriving him of employment on this arbitrary ground regardless of the particularities of his employment status and regardless of whether he was entitled to the particular prerequisites conferred by State law on employees with permanent civil service status. Indeed, he would have been protected by due process from arbitrary exclusion from employment even if he had merely been a new applicant for it (see Petr. Br., p. 27, note).



- 7.
5. **The Court below, interpreting the statute as requiring the committee's compliance with this Court's *Watkins* ruling, erred in holding that the subject of the investigation was sufficiently specific (Reply to Respondents' Point IV).**

The Court below deemed this Court's ruling in *Watkins v. United States*, 354 U. S. 178, that the subject of the investigation must be clearly revealed to the witness, applicable in determining whether the questions petitioners refused to answer were "duly authorized" within the meaning of the California statute (R. 139; see R. 189). We therefore do not believe that it is open to respondents to argue before this Court that the *Watkins* doctrine should not apply.

Respondents still have not attempted, despite their assertion that there were "multiple sources of information" as to the subject of inquiry before the Committee (Br., p. 30), to state what that subject was. We submit that the remark of Representative Jackson as to Federal employees, quoted by respondents, only indicates one possible concern of the committee. In any event it cannot be deemed to define the subject of investigation, considering that petitioner Globe was never a Federal employee. Moreover, the remarks of Congressman Doyle, cited by respondents (Br., p. 31), indicate quite a different concern. In sum, there is nothing either in the statements of the chairman of the subcommittee or its members or in the questioning of petitioners or in any other source of information which clearly defines the subject under inquiry (see Petr. Br., pp. 32-4).

6. **The Court below interpreted the statute as authorizing petitioners' discharges even if their objections under the First Amendment to the Committee's questions were valid; the issue of whether the Committee in fact was violating the First Amendment is therefore not presented to this Court (Reply to Respondents' Point V).**

As we have pointed out in our main brief (pp. 27-28), the authoritative interpretation of the California statute is that it directed petitioners' discharges regardless of the validity of their constitutional objections to the House Committee's questions. The constitutionality of the California statute as here applied must therefore be determined on the assumption that petitioners had a right under the First Amendment to refuse to answer the Committee's questions.

7. **The California statute, as here applied to petitioners, was an unconstitutional interference with the privilege against self-incrimination secured by the Fifth Amendment as well as other Federal rights and privileges (Reply to Respondents' Points VI and VII).**

Petitioners have at all stages of this proceeding argued that their discharges were an unconstitutional interference with the exercise of the privilege against self-incrimination guaranteed by the Fifth Amendment in Federal proceedings.<sup>4</sup> Respondents have offered no cogent reply to this argument. They state that petitioners cannot maintain that California interfered with and curtailed exer-

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<sup>4</sup> See Petition to this Court for Writ of Certiorari, p. 3; as to previous stages of proceeding, R. 10-11, 109, 168, and Petition for Certiorari, pp. 13-14. While we believe that the question of Federal supremacy can be deemed incidental to the questions raised by the Petition for Certiorari (compare Resp. Br., footnote 1), inclusion of this question is not essential to petitioners' Constitutional argument.

cise of the privilege because they in fact invoked the privilege before the House Committee (Resp. Br., p. 35). If this rather disingenuous approach were followed there could be no challenge to unconstitutional state action of this type: if the employee failed to assert his constitutional rights before the Committee, he certainly would have no case; and if he asserts his rights, he cannot, according to respondents, contest the deprivation inflicted on him as a result of his assertion. Fortunately, however, respondents' view does not accord with judicial procedure. Petitioners can claim the unconstitutionality of the deprivation imposed on them because of their invocation of their constitutional rights, in the same way as in *Watkins v. United States*, 354 U. S. 178—to take one of innumerable possible examples—this Court considered whether Watkins, who had invoked his constitutional rights in a Congressional investigation, could for that reason be punished for contempt.

As Judge Learned Hand said in reply to an argument similar to respondents': It would "emasculate" the Fifth Amendment privilege "to deny protection against reprisals to those whom threats did not deter." *Bonar v. Keyes*, 162 F. 2d 136, 139 (C. A. 2, 1947).

Respondents also argue that petitioners were dismissed not "because of the exercise of constitutional rights but because of the mere fact of their refusal to answer" (Resp. Br., p. 35). The attempted distinction is impossible. Petitioners' constitutional right under the First and Fifth Amendments was the right to refuse to answer questions violating the First Amendment or within the scope of the Fifth Amendment privilege; their refusals to answer constituted the assertion of these rights. Again respondents' novel approach would destroy the process of adjudicating constitutional rights. In any of the cases involving a refusal to testify on grounds of the Fifth Amendment, such as *Slochower* or *Quinn*,<sup>5</sup> it could have been argued that the

<sup>5</sup> *Slochower v. Board of Education*, 350 U. S. 551; *Quinn v. United States*, 349 U. S. 155.

constitutional basis for the refusal should be ignored and the discharge or contempt penalty, respectively, viewed as if imposed for the bare physical act of refusing to answer.

Finally respondents indicate that petitioners are viewing the privilege of State employment as a Federal privilege (Resp. Br., pp. 36-38). Petitioners are not chargeable with this error: It is of course the privilege against self-incrimination before a Federal body, granted by the Fifth Amendment, to which petitioners refer as a Federal privilege, and not State employment. Petitioners' point is that the State, by conditioning the privilege of employment on the sacrifice of this Federal privilege, interferes with its exercise. Respondents ignore, rather than answer, the precedents that support petitioners (see Petr. Br., pp. 28-29). Even absent precedent, it could not be doubted that the realistic effect of California's threat to discharge an employee who invokes his constitutional rights before a Congressional committee, is to coerce employees to forego exercise of the Federal right to refuse to answer on Federal constitutional grounds.

Respectfully submitted,

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January, 1960.

# SUPREME COURT OF THE UNITED STATES

No. 152.—OCTOBER TERM, 1959.

(Thomas W. Nelson and Arthur  
Globe, Petitioners,  
v.  
County of Los Angeles, et al.)

On Writ of Certiorari to  
the District Court of  
Appeal of California,  
Second Appellate Dis-  
trict.

[February 29, 1960.]

MR. JUSTICE CLARK delivered the opinion of the Court.

Petitioners, when employees of the County of Los Angeles, California, were subpoenaed by and appeared before a Subcommittee of the House Un-American Activities Committee, but refused to answer certain questions concerning subversion. Previously, each petitioner had been ordered by the County Board of Supervisors to answer any questions asked by the Subcommittee relating to his subversive activity, and § 1028.1 of the Government Code of the State of California<sup>1</sup> made it the duty of any

<sup>1</sup> California Government Code, § 1028.1:

"It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the State or local agency by which such employee is employed to appear before such governing body, or a committee or sub-committee thereof, or by a duly authorized committee of the Congress of the United States, or of the legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

"(a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States or of any state.

"(b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States or of any state.

"(c) Past knowing membership at any time since October 3, 1945, in any organization which, to the knowledge of such employee, during

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public employee to give testimony relating to such activity on pain of discharge "in the manner provided by law." Thereafter the County discharged petitioners on the ground of insubordination and violation of § 1028.1 of the Code. Nelson, a permanent social worker employed by the County's Department of Charities, was, upon his request, given a Civil Service Commission hearing which resulted in a confirmation of his discharge. Globe was a temporary employee of the same department and was denied a hearing on his discharge on the ground that, as such, he was not entitled to a hearing under the Civil Service Rules adopted pursuant to the County Charter. Petitioners then filed these petitions for mandates seeking reinstatement, contending that the California statute and their discharges violated the Due Process Clause of the Fourteenth Amendment. Nelson's discharge was affirmed by the District Court of Appeal, 163 Cal. App. 2d 607, 329 P. 2d 978, and Globe's summary dismissal was likewise affirmed, 163 Cal. App. 2d 595, 329 P. 2d 971. A petition for review in each of the cases was denied without opinion by the Supreme Court of California, three judges dissenting. 163 Cal. App. 2d 614, 329 P. 2d 983; 163 Cal.

the time of the employee's membership advocated the forceful or violent overthrow of the Government of the United States or of any state.

"(d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since October 3, 1945.

"(e) Present personal advocacy by the employee of the support of a foreign government against the United States in the event of hostilities between said foreign government and the United States.

"Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law."



App. 2d 606, 329 P. 2d 978. We granted certiorari. 360 U. S. 928. The judgment in Nelson's case is affirmed by an equally divided Court and will not be discussed. We conclude that Globe's dismissal was valid.

On April 6, 1956, Globe was served with a subpoena to appear before the Subcommittee at Los Angeles. On the same date, he was served with a copy of an order of the County Board of Supervisors, originally issued February 19, 1952, concerning appearances before the Subcommittee. This order provided, among other things, that it was the duty of any employee to appear before the Subcommittee when so ordered or subpoenaed, and to answer questions concerning subversion. The order specifically stated that any "employee who disobeys the declaration of this duty and order will be considered to have been insubordinate . . . and that such insubordination shall constitute grounds for discharge . . . ." <sup>2</sup> At the appointed time, Globe appeared before the Subcommittee and was interrogated by its counsel concerning his familiarity with the John Reid Club. He claimed that this was a matter which was entirely his "own business," and, upon being pressed for an answer, he stated that the question was "completely out of line as far as my rights as a citizen are concerned, [and] I refuse to answer this question under the First and Fifth Amendments of the Constitution of the United States." On the same grounds he refused to answer further questions concerning the Club, including one relating to his own membership. Upon being asked if he had observed any Communist activities on the part of members of the Club, Globe refused to answer, and suggested to committee counsel "that you get one of your

<sup>2</sup> This original order was the forerunner of § 1028.1 of the California Government Code, enacted in 1953, which with certain refinements embodied the requirements of the order into state law. It is against this Section that petitioner levels his claims of unconstitutionality. See note 1, *supra*.

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trained seals up here and ask them." He refused to testify whether he was "a member of the Communist Party now" "on the same grounds" and "as previously stated for previous reasons." On May 2, by letter, Globe was discharged, "without further notice," on "the grounds that [he had] been guilty of insubordination and of violation of Section 1028.1 of the Government Code of the State of California . . . ." The letter recited the fact that Globe had been served with a copy of the Board order relating to his "duty to testify as a County employee . . . before said Committee" and that, although appearing as directed, he had refused to answer the question, "Are you a member of the Communist Party now?" Thereafter Globe requested a hearing before the Los Angeles County Civil Service Commission, but it found that, as a temporary employee, he was not entitled to a hearing under the Civil Service Rules.<sup>3</sup> This the petitioner does not dispute.

However, Globe contends that, despite his temporary status, his summary discharge was arbitrary and unreasonable and, therefore, violative of due process. He reasons that his discharge was based on his invocation before the Subcommittee of his rights under the First and Fifth Amendments. But the record does not support even an

##### *"19.07. Probationary Period Following First Appointment.*

"An employee who has not yet completed his first probationary period may be discharged or reduced in accordance with Rule 19.09 by the appointing power by written notice, served on the employee and copy filed with the Commission, specifying the grounds and the particular facts on which the discharge or reduction is based. Such an employee shall be entitled to answer, explain, or deny the charges in writing within ten business days but shall not be entitled to a hearing, except in case of fraud or of discrimination because of political or religious opinions, racial extraction, or organized labor membership."

##### *"19.09. Consent of Commission.*

"No consent need be secured to the discharge or reduction of a temporary or recurrent employee."

inference in this regard, and both the order and the statute upon which the discharge was based avoided it. In fact, California's court has held to the contrary, saying, "At no time has the cause of petitioner's discharge been alleged to be anything but insubordination and a violation of § 1028.1, nor indeed under the record before us could it be." 163 Cal. App. 2d, at 599, 329 P. 2d, at 974. Moreover, this finding is buttressed by the language of the order and of California's statute. Both require the employee to answer any interrogation in the field outlined. Failure to answer "on any ground whatsoever any such questions" renders the employee "guilty of insubordination" and requires that he "be suspended and dismissed from his employment in the manner provided by law." California law in this regard, as declared by its court, is that Globe "has no vested right to county employment and may therefore be discharged summarily." We take this interpretation of California law as binding upon us.

We, therefore, reach Globe's contention that his summary discharge was nevertheless arbitrary and unreasonable. In this regard he places his reliance on *Slochower v. Board of Education*, 350 U. S. 551 (1956). However, the New York statute under which Slochower was discharged specifically operated "to discharge every city employee who invokes the Fifth Amendment. In practical effect the questions asked are taken as confessed and made the basis of the discharge." *Id.*, at 558. This "built-in" inference of guilt, derived solely from a Fifth Amendment claim, we held to be arbitrary and unreasonable. But the test here, rather than being the invocation of any constitutional privilege, is the failure of the employee to answer. California has not predicated discharge on any "built-in" inference of guilt in its statute, but solely on employee insubordination for failure to give information which we have held that the State has

a legitimate interest in securing. See *Garner v. Board of Public Works of Los Angeles*, 341 U. S. 716 (1951); *Adler v. Board of Education*, 342 U. S. 485 (1952). Moreover it must be remembered that here—unlike *Slochower*—the Board had specifically ordered its employees to appear and answer.

We conclude that the case is controlled by *Beilan v. Board of Education of Philadelphia*, 357 U. S. 399 (1958), and *Lerner v. Casey*, 357 U. S. 468 (1958). It is not determinative that the interrogation here was by a federal body rather than a state one, as it was in those cases. Globe had been ordered by his employer as well as by California's law to appear and answer questions before the federal Subcommittee. These mandates made no reference to Fifth Amendment privileges. If Globe had simply refused, without more, to answer the Subcommittee's questions, we think that under the principles of *Beilan* and *Lerner* California could certainly have discharged him. The fact that he chose to place his refusal on a Fifth Amendment claim puts the matter in no different posture, for as in *Lerner, supra*, at 477, California did not employ that claim as the basis for drawing an inference of guilt. Nor do we think that this discharge is vitiated by any deterrent effect that California's law might have had on Globe's exercise of his federal claim of privilege. The State may nevertheless legitimately predicate discharge on refusal to give information touching on the field of security. See *Garner* and *Adler, supra*. Likewise, we cannot say as a matter of due process that the State's choice of securing such information by means of testimony before a federal body<sup>4</sup> can be denied. Finally, we do not believe that California's grounds for discharge was an arbitrary classification. See *Lerner, id.*, at 478. We conclude that the order of the County

<sup>4</sup>It is noteworthy that the California statute requires such information to be given before both state and federal bodies.

Board was not invalid under the Due Process Clause of the Fourteenth Amendment.

Nor do we believe that the remand on procedural grounds required in *Vitarelli v. Seaton*, 359 U. S. 535 (1959), has any bearing here. First, we did not reach the constitutional issues raised in that case. Next, Vitarelli was a Federal Department of Interior employee who "could have been summarily discharged by the Secretary at any time without the giving of a reason." *Id.*, at 539. The Court held, however, that, since Vitarelli was dismissed on the grounds of national security rather than by summary discharge, and his dismissal "fell substantially short of the requirements of the applicable departmental regulations," it was "illegal and of no effect." *Id.*, at 545. But petitioner here raises no such point, and clearly asserts that "whether or not petitioner Globe was accorded a hearing is not the issue here." He bases his whole case on the claim "that due process affords petitioner Globe protection against the State's depriving him of employment on this arbitrary ground" of his refusal on federal constitutional grounds to answer questions of the Subcommittee. Having found that on the record here the discharge for "insubordination" was not arbitrary, we need go no further.

We do not pass upon petitioner's contention as to the Privileges and Immunities Clause of the Fourteenth Amendment, since it was neither raised in nor considered by the California courts. The judgments are

*Affirmed.*

MR. CHIEF JUSTICE WARREN took no part in the consideration or decision of this case.

Nor does petitioner make any attack on the failure of California's statute to afford temporary employees such as he an opportunity to explain his failure to answer questions. It will be noted that permanent employees are granted such a privilege.

# SUPREME COURT OF THE UNITED STATES

No. 452.—OCTOBER TERM, 1959.

Thomas W. Nelson and Arthur  
Globe, Petitioners,

County of Los Angeles, et al.

On Writ of Certiorari to  
the District Court of  
Appeal of California,  
Second Appellate Dis-  
trict.

[February 29, 1960.]

MR. JUSTICE BLACK, whom MR. JUSTICE DOUGLAS joins, dissenting.

Section 1028.1 of the California Code, as here applied, provides that any California employee who refuses to incriminate himself when asked to do so by a Congressional Committee "shall be suspended and dismissed from his employment in the manner provided by law." The Fifth Amendment, which is a part of the Bill of Rights, provides that no person shall be compelled to incriminate ("to be a witness against") himself. The petitioner, Globe, an employee of the State of California, appeared before the House Un-American Activities Committee of the United States Congress and claimed this federal constitutional privilege. California promptly discharged him, as the Court's opinion says, for "insubordination and violation of § 1028.1 of the Code." The "insubordination and violation" consisted exclusively of Globe's refusal to testify before the Congressional Committee; a ground for his refusal was that his answers might incriminate him. It is beyond doubt that the State took Globe's job away from him only because he claimed his privilege under the Federal Constitution.

Here, then, is a plain conflict between the Federal Constitution and § 1028.1 of the California Code. The Federal Constitution told Globe he could, without penalty,



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refuse to incriminate himself before any arm of the Federal Government; California, however, has deprived him of his job solely because he exercised this federal constitutional privilege. In giving supremacy to the California law, I think the Court approves a plain violation of Article VI of the Constitution of the United States which makes that Constitution "the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." I also think that this discharge under state law is a violation of the Due Process Clause of the Fourteenth Amendment in its authentic historical sense: that a State may not encroach upon the individual rights of people except for violation of a law that is valid under the "law of the land." "Law of the land" of necessity includes the supreme law, the Constitution itself.

The basic purpose of the Bill of Rights was to protect individual liberty against governmental procedures that the Framers thought should not be used. That great purpose can be completely frustrated by holdings like this. I would hold that no State can put any kind of penalty on any person for claiming a privilege authorized by the Federal Constitution. The Court's holding to the contrary here does not bode well for individual liberty in America.

# SUPREME COURT OF THE UNITED STATES

No. 152.—OCTOBER TERM, 1959.

Thomas W. Nelson and Arthur  
Globe, Petitioners,

v.

County of Los Angeles, et al.

On Writ of Certiorari to  
the District Court of  
Appeal of California,  
Second Appellate Dis-  
trict.

[February 29, 1960.]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE  
DOUGLAS joins, dissenting.

This is another in the series of cases involving discharges of state and local employees from their positions after they claim their constitutional privilege against self-incrimination before investigating committees. See *Slochower v. Board of Higher Education*, 350 U. S. 551; *Beilan v. Board of Public Education*, 357 U. S. 399; *Lerner v. Casey*, 357 U. S. 468. While I adhere on this matter of constitutional law to the views I expressed in dissent in the latter two cases, 357 U. S. at 417, it is enough to say here that I believe this case to be governed squarely by *Slochower*, and on that basis I put my dissent. Of course this opinion is limited solely to Globe's discharge.

California has commanded that its employees answer certain broad categories of questions when propounded to them by investigating bodies, including federal bodies such as the Subcommittee of the Un-American Activities Committee involved here. Cal. Government Code § 1028.1. Invocation of the privilege against self-incrimination before such a body, in response to questions of those sorts, is made a basis for discharge.<sup>1</sup> In the case

<sup>1</sup> The Court appears to treat the fact that the California statute is not in terms directed at the exercise of the privilege against self-incrimination, but rather covers all refusals to answer, as a factor

## 2 NELSON v. COUNTY OF LOS ANGELES.

of a permanent employee, it is held that discharge may come only after a hearing at which the employee is given, at least, an opportunity to explain his exercise of the privilege. *Board of Education v. Mass.* 47 Cal. 2d 494, 304 P. 2d 1015. But for a temporary or probationary employee, like *Globe*, as interpreted authoritatively by the California courts below, the state law requires a discharge of the employee upon his claim of the privilege, without further ado. 329 P. 2d, at 978. Opportunity for an explanation by the employee or for administrative consideration of the circumstances of the claim of privilege are foreclosed under the state law.

In *Slochower*, this Court had a substantially identical situation before it. There a local law which made a claim of the constitutional privilege "equivalent to a

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militating in favor of its validity. The Court seems to view the privilege against self-incrimination as a somewhat strange and singular basis on which to decline to answer questions put in an investigation; or at most as an individual private soldier in a large army of reasons that might commonly be given for declining to respond. I am afraid I must view the matter more realistically. But even if the statute were taken as wholeheartedly at face value as the Court does, the consequence would not be that it was more reasonable, but rather that it was more arbitrary. It hardly avoids the rationale of this Court's decision in the *Slochower* case if the State adds other constitutional privileges to the list, exercise of which results *per se* in discharge. Such a statute would be even the more undifferentiating and arbitrary in its basis for discharge than the one involved in *Slochower*. And of course the crowning extent of arbitrariness is exposed by the contention that the fact that discharge would have followed a refusal to answer predicated on no reason at all justifies discharge upon claim of a constitutional privilege. It would appear of the essence of arbitrariness for the State to lump together refusals to answer based on good reasons and those based on no reason at all, and make discharge automatically ensue on all. What was struck down in *Slochower* as unconstitutionally arbitrary—undifferentiating treatment merely among those pleading the self-incrimination privilege—seems almost reasonable by comparison.

resignation" was struck down as violative of the Due Process Clause of the Fourteenth Amendment. Only one word is necessary to add here to the Court's statement there of its reason for voiding the provision: "As interpreted and applied by the state courts, its operates to discharge every [temporary] . . . employee who invokes the Fifth Amendment. In practical effect the questions asked are taken as confessed and made the basis of the discharge. No consideration is given to such factors as the subject matter of the questions, remoteness of the period to which they are directed, or justification for exercise of the privilege. It matters not whether the plea resulted from mistake, inadvertence or legal advice conscientiously given, whether wisely or unwisely. The heavy hand of the statute falls alike on all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive." 350 U. S., at 558. The Court distinguished instances in which the employing government itself might be conducting an investigation into the "fitness" of the employee.

As applied, then, to temporary or probationary employees, the California statute contains the identical vice of automatic discharge for a Fifth Amendment plea made before another body, not concerned with investigating the "fitness" of the employee involved. It is sought here to equate Globe's case with those of Beilan and Lerner. But in the latter cases the Court took the view that the state discharges were sustainable because the employees' pleas of self-incrimination before local administrative agency investigations of their competence and reliability prevented those employing bodies from having an adequate record on which to reach an affirmative conclusion as to their competence and reliability. This failure to cooperate fully (styled lack of candor) within the framework of the employer's own proceeding to determine fitness, was said to be a constitu-

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tional basis for discharge. 357 U. S., at 405-408; 357 U. S., at 475-479; and see 357 U. S., at 410 (concurring opinion). But here there was not the vaguest semblance of any local administrative procedure designed to determine the fitness of Globe for further employment.<sup>2</sup> It has not been hitherto suggested that the authorizing resolutions of the Un-American Activities Committee extend to enabling it to perform these functions on a grant-in-aid basis to the States. Accordingly there is presented here the very same arbitrary action—the drawing of an inference of unfitness for employment from exercise of the privilege before another body, without opportunity to explain on the part of the employee, or duty on the part of the employing body to attempt to relate the employee's conduct specifically to his fitness for employment—as was involved in *Slochower*. There is the same announced abdication of the local administrative body's own function of determining the fitness of its employees, in favor of an arbitrary and *per se* rule dependent on the behavior of the employee before another body not charged with determining his fitness.

It is said that this case differs from *Slochower* because that case involved a determination, based on his invocation of the privilege, that the employee was guilty of substantive misconduct, while this one simply involves a case of "insubordination" in the employee's failure to answer questions asked by the Congressional Committee which the employing agency has ordered be answered. In the first place, *Slochower* did not involve any finding by the

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<sup>2</sup> In *Slochower* it was said, "It is one thing for the city authorities themselves to inquire into Slochower's fitness, but quite another for his discharge to be based entirely on events occurring before a federal committee whose inquiry was announced as not directed at the property, affairs, or government of the city, or . . . official conduct of city employees." 350 U. S., at 558. This distinction was asserted in *Beilan* and *Lerner*. 357 U. S., at 408; 357 U. S., at 477.

New York authorities that the employee was guilty of the matters as to which he claimed the privilege. The claim of the privilege was treated by the State as equivalent to a resignation, 350 U. S., at 554, and it was only "in practical effect," *id.*, at 558, that the questions asked were taken as confessed; that is, the State claimed the power to take the same action, discharge of the employee from employment, upon a plea of the privilege, as it could have taken upon a confession of the matters charged. The case involved an inference of unfitness for office, then, drawn arbitrarily and without opportunity to explain, from the assertion of the privilege. The same is involved here, and the thin patina of "insubordination" that the statute overcasts on the exercise of the privilege does not change the matter. If the State labeled as "insubordination" and mandatory ground for a discharge every failure by an employee to respond to questions asked him by strangers on the street, its action would be as pointless as it was arbitrary. The point of the direction given to all employees here to answer the sort of questions covered by the statute must have been that the State thought that the matters involved in the questions bore some generic relationship to the "fitness" of the employee to hold his position. But on this basis the case is again indistinguishable from *Slochower*. If it is unconstitutionally arbitrary for the State to treat every invocation of the privilege as conclusive on his fitness and in effect an automatic discharge, then the command of the State that no temporary employee shall claim the privilege under pain of automatic discharge must be an unconstitutionally arbitrary command. A State could not, I suppose, discharge an employee for attending religious services on

\* The opinion in the New York Court of Appeals also makes it quite clear that *Slochower* was not being discharged as guilty of the matters inquired about. *Daniman v. Board of Higher Education*, 306 N. Y. 532, 538.



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Sunday, see *Wicman v. Updegraff*, 344 U. S. 183, 192; and equally so it could not enforce, by discharges for "insubordination," a general command to its employees not to attend such services.

The state courts distinguished this case from *Slochower* on the grounds that Slochower was a state employee with tenure, but Globe was a temporary or probationary employee not entitled to a hearing on discharge. On this basis, it concluded that the requirement that this Court outlined in *Slochower*—that he could not be discharged *ipso facto* on his claim of the privilege, but only after a more particularized inquiry administered by his employer—did not apply. 329 P. 2d, at 975-976. But this Court has nothing to do with the civil service systems of the States, as such. And Globe does not here contend that he could not have been discharged without a hearing; but he does attack the specified basis of his discharge. Doubtless a probationary employee can constitutionally be discharged without specification of reasons at all; and this Court has not held that it would offend the Due Process Clause, without more, for a State to put its entire civil service on such a basis, if as a matter of internal polity it could stand to do so. But if a State discharged even a probationary employee because he was a Negro or a Jew, giving that explicit reason, its action could not be squared with the Constitution. So with Slochower's case; this Court did not reverse the judgment of New York's highest court because it had disrespected Slochower's state tenure rights, but because it had sanctioned administrative action taken expressly on an unconstitutionally arbitrary basis. So here California could have summarily discharged Globe, and that would have been an end to the matter; without more appearing, its action would be taken to rest on a permissible judgment by his superiors as to his fitness. But if it chooses expressly to bottom his discharge on a basis—like that

of an automatic, unparticularized reaction to a plea of self-incrimination—which cannot by itself be sustained constitutionally, it cannot escape its constitutional obligations on the ground that as a general matter it could have effected his discharge with a minimum of formality. Cf. *Vitarelli v. Seaton*, 359 U. S. 535, 539.

For these reasons the judgment as to Globe should be reversed.